116-665

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. ~~891~~ 121

THE VICKSBURG, SHREVEPORT AND PACIFIC RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

ELIAS S. DENNIS, SHERIFF OF MADISON PARISH, LOUISIANA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

FILED OCTOBER 16, 1882.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 394.

THE VICKSBURG, SHREVEPORT AND PACIFIC RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

ELIAS S. DENNIS, SHERIFF OF MADISON PARISH, LOUISIANA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

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1 STATE OF LOUISIANA:

Supreme Court of Louisiana, Monroe, La.

JAMES DENNIS, Sheriff & Tax Collector,

vs.

THE VICKSBURG, SHREVEPORT AND PACIFIC RAILROAD CO.

Pleas and proceedings had and done at a regular term of the supreme court of Louisiana, at Monroe, La., begun and held pursuant to law at the court-room of said court, beginning on the fifth day of June, A. D. 1882.

Present: Edward Bermudez, chief justice; Felix P. Poché, Robert B. Todd, Charles E. Fenner, associate justices; Robert J. Willson, clerk; & J. E. McGuire, sheriff.

2 *Petition. Filed* 14*th March*, 1881.

JAMES DENNIS, Sheriff and Tax Collector,
vs.
THE VICKSBURG, SHREVEPORT AND PACIFIC RAILROAD COMPANY. } No. 1675.

To the Hon. R. W. Richardson, judge 5th judical dist., holding sessions in and for the parish of Ouachita:

The petition of James Dennis, sheriff of the parish of Madison and *ex-officio* collector of taxes, with respect shows: That by act No. 228 of 1853 the General Assembly of the State of Louisiana incorporated the Vicksburg, Shreveport and Texas Railroad Company for the purpose, as shown by the preamble of said act, of constructing a railroad and magnetic telegraph from a point opposite Vicksburg west to the line of the State of Texas *via* Monroe & Shreveport, and that by section 2 of said act the capital stock of said company, its road, fixtures, vehicles of transportation, and other appertenances, were exempted from taxation for a period of ten years
3 after the completion of said road.

That said company built a portion of said road west only as the town of Monroe, a distance of about seventy miles, said road being known as the Vicksburg, S. & T. R. R.

That Monroe has been the terminus of said road since it reached said town in January, 1861.

That by sec. 9 of said act said company will have perpetual existence unless said corporation shall be dissolved by a vote of three-fourths of its stockholders at a meeting called specially for said purpose, or shall fail or become insolvent. Your petitioner avers that said railroad, with all of its fixtures, rolling-stock, depots, warehouses, lands, and all other property belonging to said corporation, situated in the parish of Madison, is due the State of Louisiana for the amount assessed for taxes in said parish against said corporation on the assessment rolls of said parish for the years 1877, 1878, valuation and tax assessed as follows: For the year 1877, two hundred and forty-

five thousand dollars; amount of tax assessed, three thousand
4 one hundred and eighty-five dollars, with two per cent. per month thereon from 1 Dec., 1879, for the year 1878; one hundred and five thousand dollars; amount of tax assessed, one thousand one hundred and twenty-two dollars; with 2 per cent. per month interest thereon from 1st Dec., 1879. The part of the assessment rolls for said years, embracing said amounts, is hereto attached and made a part hereof. That in the year 1880 said property was assessed to the Vicksburg, Shreveport and Pacific Railroad Co., the present owners of said Vicksburg, Shreveport and Texas railroad, who purchased the same on the 1st day of Dec., 1879. The valuation in 1880 was three hundred and forty thousand dollars, and the tax assessed was two thousand and forty dollars, with 8 per cent. interest thereon from January 1, 1881. The portion of the assessment rolls of the year 1880, embracing said assessment, is hereto attached & made a part hereof.

All the above taxes are due the State of Louisiana.

Petitioner avers that all of the above assessment rolls for
5 said years have been duly filed with the recorder of Madison parish, said property returned delinquent for said years, and the State of Louisiana has acquired a lien, privilege, and mortgage on all the property described on said assessment rolls for said taxes. Avers that all proper & legal notices have been given as required by the revenue laws of the State of Louisiana.

Petitioner avers that sec. 2 of act No. 228 of 1853 is null and void, being in conflict and in violation of articles 115 and 123 of the constitution of 1852, and that in consequence thereof said Vicksburg, Shreveport and Texas R. R. was never exempted from paying taxes to the State of Louisiana on the property mentioned in said section. Further avers that the Vicksburg, Shreveport and Texas Railroad Company, after its organization, and after it had built said road to Monroe, became insolvent, and were utterly unable to construct said road as contemplated by their charter, and abandoned the intention of constructing and establishing said road, & by reason of the
6 inability of said company to construct said road and the abandonment of the intention to further construct said road, the property of said company mentioned in said section 2 and all other property of said company became liable to the State of Louisiana for taxes.

Petitioner avers that said road was sold at sheriff's sale in the town of Monroe, on the day of —, 1865, at the suit of W. R. Gordon *vs.* V., S. & T. R. R. Co., on a writ of seizure & sale to make the sum of seven hundred & twenty dollars, and that John T. Ludeling & others purchased said road and all of its property, as will appear by reference to said suit, No. — on the docket of the late 12th judicial dist. court for the parish of Ouachita, here referred to and made a part hereof.

That said Vicksburg, Shreveport & Texas Railroad Company were either unable to prevent said sale, in consequence of the insolvency of said company, or said company wilfully and fraudulently permitted said sale to be made, thus placing it beyond their power to construct said road as intended and contemplated by the charter

of said company; and that said company, by permitting said
7 sale to be made, evinced an intention to abandon the construction of said road, and did in fact abandon the intention of constructing said road; and by reason of the abandonment of the intention to build said road, said railroad property, warehouses, lands, & other property became subject to taxation.

Petitioner further avers that in case it be declared that said sec. 2 is constitutional and valid, & that the property mentioned in sec. 2 is still exempt, then your petitioner avers that said exemption must be construed to embrace only the property therein mentioned, & that its lands, town lots, and other property not mentioned in said section is liable to the State of Louisiana for taxes assessed on the rolls herein referred to and annexed hereto.

Further avers that in the suit of Henry R. Jackson *et al. vs.* V., S. & T. R. R. Co., in the C. C. of the United States for the district of Louisiana, & by a final decree of the U. S. S. Court, October term, 1874, the first mortgage on said road was foreclosed, and said property was sold on 1st Dec., 1879, and purchased by the holders
8 of the bonds of said company, secured by said mortgage, and said purchasers, after said sale & purchase by them, organized themselves into the Vicksburg, Shreveport & Pacific Railroad Company, whereof Edmund Richardson was made president, the domicil of said company being located at Monroe, La. That the road and property so purchased & now used by said company is the identical road & property formerly owned by the Vicksburg, Shreveport & Texas Railroad Co., upon which said taxes were levied for said years 1877 & 1878 & in 1880 to said company.

For the reasons herein alleged your petitioner avers that all of said property on said assessment rolls is legally indebted to the State of Louisiana for taxes as herein stated and for said amounts, and that the State of Louisiana has a lien, privilege, and mortgage on said property for the payment of said taxes, and that they follow the same into the hands of the present owners, said railroad and property being liable for all taxes herein embraced, for all taxes due to
1878, inclusive, and the tax assessed in 1880. Wherefore
9 peti-oner prays that said Vicksburg, Shreveport and Pacific Railroad Co., through its president, Edmund Richardson, may be cited to answer hereto, and that on a trial hereof all the property described on said assessment rolls, the Vicksburg, Shreveport and Texas railroad, now the Vicksburg, Shreveport and Pacific railroad, with all of its rolling-stock, vehicles of transportation, warehouses, platforms, lands, and other property situated in the parish of Madison be declared subject to taxation and not exempt therefrom; that the amount of taxes assessed and due by said property be declared legal and valid taxes, and that the lien, privilege, and mortgage of the State of Louisiana on said property be recognized and rendered executory, and that the same be sold to satisfy said taxes, for all necessary orders and general relief.

JNO. B. STONE, *Dist. Att'y 8th Dist. of Louisiana.*
RICHARDSON, McENERY & YOUNG, *Att'ys.*
F. G. HUDSON, *Dist. Att'y 5 Dist. La.*

Names of taxable persons.	Quantity of land in each tract or lot, and description by boundaries.	Cash value of machinery and appertenances.	Judgments, &c.	Cash value of railroads in this State, or partly within this State and another State.	Cash value of bonds of all kinds, specifying each kind and their value.	Franchises.
Page 24 non-resident roll.	Year 1877.					
Vicksburg, Shreveport & Texas Railroad Co.	34 miles of railroad in running order, with road-bed, ties, rails, right of way, & all other appertenances, within the parish of Madison, including tanks, water stations, depots, platforms, &c.	.....	4½ mills sp'c'l levee tax. $1,102 50	$2,450 00	10 mills ph. tax for 1877. $2,450 00	13 mills State tax for 1877. $3,185 00
Page 8 supplemental roll.	Year 1878.					
Vicksburg, Shreveport & Texas Railroad Co.	34 miles railroad in running order, with road-bed, ties, rails, right of way, & all other appertenances, within the parish of Madison, including tanks, water stations, depots, platforms, &c.	.....	10 mills dist. levee tax, 1878. $1,020 00	1,020 00	10 mills ph. tax for 1878. $1,020 00	11 mills State tax for 1878. $1,122 00
Page 67.	Year 1880.					
Vicksburg, Shreveport & Texas Railroad Co.	34 miles railroad in running order, with road-bed, ties, rails, rights of way, & all other appertenances, within the parish of Madison, including tanks, water stations, depots, platforms, &c.	5 mills spe'l ph. levee for 1880. $1,700 00	5 mills dist. levee for 1880. $1,700 00	3,400 00	10 mills ph. tax for 1880. $3,400 00	6 mills State tax for 1880. $2,040 00

A true copy from the assessment rolls of the parish of Madison for the years 1877, 1878, & 1880, this 25th May, 1882.

J. S. RICHARDSON,
D'y Collector.

11 *Agreement A. Filed 12th April, '81.*

This agreement, made between counsel representing the State of Louisiana and the parishes of Madison, West Carroll, Franklin, Richland, Ouachita, and Caddo on the one side and the Vicksburg, Shreveport & Pacific Railroad Company on the other side, shows: That whereas the State and parishes named, claiming that they have the right to enforce from the railroad company payment of taxes on the railroad, its property, franchises, &c., in the several parishes named heretofore, caused the same to be placed upon the assessment rolls for said purpose, and the said company, claiming that under the 2nd sec. of its original charter its roads, fixtures, workshops, appurtenances, &c., are exempt from taxation and not liable for the claim of the State or said parishes:

Now, therefore, it is agreed that, waiving all technical points of domicil and defences, suits shall be brought by the State and the several parishes and other corporations claiming the right against the company in the 5th district court of Ouachita to enforce
12 the collection of the taxes claimed. That one of said suits in behalf of the State shall be promptly put at issue, and the square, legal question of the liabilities of the property for taxes determined thereon with as little delay as possible, and in the case selected all questions as [to] the assessment, amount [of] valuation, notices, &c., shall be waived, it being admitted that the same are fair & in accordance with the requirements of the statute; and the correctness of the valuation in all the other cases shall be the only open question on the subject of the assessments, notices, filing of rolls, &c., and that said selected case shall be put at issue and tried with the least possible delay, appealed to the supreme court & other courts if either party desire, with the view of having the liability of the company for the taxation claimed determined without delay and with as little costs as possible, the parishes hereto agreeing, for all the suits & claims, to abide the issue presented in the selected case and all efforts in the mean time by the State and parish officers to collect or enforce collection of the taxes claimed to be stayed until
13 the final determination of the issues presented in the selected case and the deferred cases shall have judgments rendered in them in accordance with the final judgment in the selected case, and without contest on the points therein settled, except as herein expressly reserved; and with the view to facilitate the trial, save costs and time, it is admitted that the Vicksburg, Shreveport & Texas R. R. Co. was organized originally under the act approved March 11, 1852, and afterwards incorporated by act 228 of 1853.

That the railroad was completed from Vicksburg to Monroe by the 1st Jan'y, 1861, and from Shreveport to the Texas line by 1st January, 1862; that the proceedings in the cases W. R. Gordon *vs.* V., S. & T. R. R. Co., & of George M. Bramen & Co. *vs.* J. T. Ludeling *et al.*, in the dist. court of Ouachita, of Henry R. Jackson *et al. vs.* V., S. & T. R. R. Co., in the United States circuit court, and all the proceedings had in the several cases may be referred to and used

as evidence, in so far as they may apply, without being formally offered.

That the property, &c., of the company, pursuant to a decree in the Jackson case from the United States court, was sold, on the 1st of December, 1879, &, in accordance with the said decree, was purchased by a committee of bondholders, who, with others as-
14 sociated with them for the purpose, under act of sale approved March 8th, 1877, on the 2nd of December, 1879, organized themselves into the present corporation, known as the V., S. & P. R. R. Co., of which Ed. Richardson is president.

That the question of the insolvency of the company shall be left open & for evidence, neither party to delay the trial on account thereof.

And the principal and main object hereof being to test with all possible dispatch the liability of the company for the taxes claimed, all minor matters & technical defences & issues are to be ignored, except as hereinbefore set forth.

Either party having the right to furnish proof of important facts desired when it will not tend to delay the result.

Done & signed in duplicate, at Monroe, La., this 8th March, 1881.

JOHN B. STONE,
Dist. Att'y 8th Dist. of La.
McENERY & YOUNG,
For State of La., Richardson.
F. G. HUDSON,
Dist. Att'y 5th Jud'l Dist. La.
F. P. STUBBS,
For V., S. & P. R. R. Co.

Minutes. Answer Filed.

SATURDAY, *April 16th*, 1881.

Court opened pursuant to adjournment.

Present: Hon. R. W. Richardson, judge; Austin Green, clerk; J. E. McGuire, sh'ff.

15 JAS. DENNIS, Sh'ff & Tax Collector, *vs.* V., S. & P. R. R. Co. } 1675.

Answer filed.

Answer. Filed April 16th, 1881.

DENNIS, Sh'ff & Tax Coll., *vs.* THE V., S. & P. R. R. Co.

The defendant, for answer to the plaintiff's petition, generally denies each and every allegation thereof, not hereinafter specially admitted. Further answering, defendant avers that the late Vicksburg, Shreveport and Texas Railroad Co. was incorporated by an act of the Legislature of the State of Louisiana, entitled an act "to incorporate the Vicksburg, Shreveport and — Railroad Company," approved April 28th, 1853, and that by the second section of said act it is provided "That the capital stock of said company"

shall be "exempt from taxation, and its roads, fixtures, workshops, warehouses, vehicles of transportation, and other appurtenances shall be exempt from taxation for ten years after the completion of said road within the limits of the State." That said company, having organized under the charter aforesaid, proceeded to
16 construct a railroad from a railroad from a point opposite Vicksburg, in the State of Mississippi, to the town of Monroe, in the State of Louisiana, and from Shreveport, La., to the Texas State line, and that further work or progress in the construction of said road was prevented and suspended by the state of war into which the country was plunged, by the rebellion and attempted secession of the Southern States from the Union; that after the surrender of the Confederate forces & restoration of peace between the U. S. Government and States lately in insurrection, W. R. Gordon, of the parish of Ouachita, being holder of four of the mortgage bonds of said V., S., T. R. R. Co., issued (as will be hereinafter shown) in conformity to the terms of the said charter, applied to the hon. 12th district court of Louisiana, the said court embracing the parish of Ouachita in its jurisdiction at that time, for an order of seizure and sale against the property of said railroad co., mortgaged to secure the payment of said bonds and interest; that a writ of seizure and sale was issued in conformity to the prayer of the petition of said Gordon, & on the 3rd day of February,
17 1866, all the property, rights, franchises, &c., of the said V., S. & T. R. R. Co. was sold at public auction, under and by virtue of the said writ of sale, and purchased by an association of individuals afterwards incorporated into the "North Louisiana & Texas Railroad Company."

That suit was thereafter instituted in the hon. 5th circuit court of the United States, sitting in and for the State of La., by Henry R. Jackson & other bondholders of the 1st mortgage bonds of said V., S. & T. Co., concurrent with those under which the said sale had been made, praying that the aforesaid sale be annulled & set aside as having been illegally made, and as being in fraud of the rights of the bondholders of said road, the said suit being styled H. R. Jackson *et al. vs.* Jno. T. Ludeling *et al.*, No. — on the docket of said circuit court; that said cause was thereafter finally decided by the Supreme Court of the United States, annulling the said sale as having been illegal and fraudulent, and restoring the said property to the V., S. & T. R. R. Co., and ordering the same sold in satisfaction of its mortgage bond aforesaid, the said judgment having been rendered at the October term of said court, 1874.

18 That, in pursuance of the decree and judgment aforesaid the said property, comprising the Vicksburg, Shreveport & Texas R. R. Co., with its road-bed, rolling stock, depots, warehouses, vehicles of transportation, and all appurtenances attached or appertaining to the said road, & with all its rights of way, privileges, and immunities of any and all kinds & natures whatever, was sold at public auction in the city of New Orleans on the 1st day of December, 1879, & purchased by a committee of said bondholders, & for the benefit of said bondholders, under and by virtue of the said

decree and order of sale aforesaid; that said purchasers, availing themselves of the provisions of an act of the Legislature of the State, entitled "An act to provide for the transfer of the rights and franchises to purchasers of railroads, under foreclosure of mortgage upon the same;" to provide for the organization by such purchasers of new railroad companies; to authorize such new companies to borrow money and to secure the same by mortgage, & to invest such organized companies with certain rights & powers, and impose upon them certain duties, approved March 8th, 1877, organized themselves
19 into the company or corporation made defendant in this suit, the said act of incorporation being of date 2nd Dec., 1879, a printed copy of which is annexed to and made a part of that answer. That by the provision of the first section of said act, defendant by the purchase aforesaid succeeded to all the rights, privileges, and immunities of the Vicksburg, Shreveport Railroad Co. That by section 7 of the original charter of said company it was authorized to borrow money and to issue bonds secured by mortgage upon all the property of said company, and in pursuance thereto bonds of said company, secured by mortgage upon all its property, franchises, &c., were issued to the extent of seven hundred and sixty-one thousand dollars, and negotiated in the money markets of the world. That the property by the mortgage of which the payment of said bonds in principal and interest was secured was by the provision in the charter aforesaid exempt from taxation for and during the period of time aforesaid, & such exemption was an element in the value thereof, & an
20 inducement held out by the State to the public to purchase said bonds & to subscribe for the stock of said company; that the said property was sold in satisfaction of said bonds so issued under the decree and judgment of the supreme court aforesaid.

That sec. 2 of the charter aforesaid was therefore a valid and binding contract between the State of Louisiana and the stockholders & bondholders of the V., S. & T. R. R. Co.

That your respondent, by the purchase aforesaid, represent and possess all the rights of said bondholders, & by virtue of the provisions of the act of the Legislature aforesaid succeeded to all the rights, privileges, and immunities of the stockholders of the V., S. & T. R. R. Co.

That the action of the authorities of the State of Louisiana in attempting to subject the said property to State and parochial taxation is therefore illegal, tends to impair the obligation of a valid contract, and any law of the State which authorizes or directs such action on the part of its officers is null and void, as impairing the obligation of a contract & being in conflict with art. — of the Constitution of the United States. Respondent also specially denies the
21 allegation of the insolvency of the V., S. & T. R. R. Co. at any time.

Respondent also specially denies that said V., S. & T. R. R. Co. ever abandoned and gave up the work of completing said road according to the terms of its charter, and avers that the suspension of work, its failure to complete the same, resulted from irresistible force over which it had no control, which was not contemplated when its

charter was granted, and against which it was impossible for human sagacity to provide.

That while its property was in the hands of the N., L. & T. R. R. Co., under a title obtained through judicial proceedings, the said V., S. & T. R. R. Co. was powerless to prosecute the work of completion, but that as soon as this defendant (succeeded to the rights and power of said V., S. & T. R. R. Co.) obtained possession under the purchase it at once proceeded in good faith to construct a road from Monroe to Shreveport, and is now actually engaged in the prosecution of said work.

Respondent, further answering, avers that the property of the said V., S. & T. R. R. Co. was adjudicated to it free and clear of any and all incumbrances existing thereupon, except the lien in favor
22 of the North Louisiana & Texas R. R. Co., and that this court is without jurisdiction *ratione materiæ* to recognize or enforce any lien or privilege upon the same antedating the said sale.

That by virtue of a decree of said court a master in chancery thereof was directed to take an account of all liens and incumbrances existing upon the said property, and that if plaintiff claimed or asserted any privilege upon the said property such privilege should have been asserted and established before said master in chancery.

Respondent finally avers that having complied with the terms of the adjudication to it, and the sale at which its title was acquired having been made to pay and satisfy the first mortgage debt due by the said V., S. & T. Co., the property is not subject, in hands of defendant, to any mortgage or privilege against said company, but that all such mortgages or privileges, if any existed, were transferred to the price of the property in hands of the officers of the court aforesaid. Wherefore defendant prays that plaintiff's de-
23 mand be rejected, and that the property of defendant, as described in the original and amended charters of the Vicksburg, Shreveport & Texas R. R. Co., be decreed exempt from all taxation whatever until the expiration of the term fixed in said charter. Prays for costs and gen'l relief, &c.

STUBBS & STILLMAN, *Att'ys.*
BOATNER & LIDDELL,
Of Counsel.

Minutes Continuance.

WEDNESDAY, *July 6th*, 1881.

Court opened pursuant to adjournment.

Present: Hon. R. W. Richardson, judge; Austin Green, clerk; J. E. McGuire, sh'ff.

JAS. DENNIS, Sh'ff and Tax Coll'r,
vs.
V., S. & P. R. R. Co. } No. 1675.

Continued.

Minutes Setting Cause.

TUESDAY, *Oct.* 25*th*, 1881.

Court opened pursuant to adjournment.
Present: Hon. R. W. Richardson, judge; Austin Green, clerk; J. E. McGuire, sh'ff.

JAS. DENNIS, Sh'ff and Tax Collector,
vs.
V., S. & P. R. R. Co. } No. 1675.

Set for Wednesday, 2nd Nov.

24 *Minutes Setting Cause.*

THURSDAY, *November* 3*d*, 1881.

Court met pursuant to adjournment.
Present: Hon. R. W. Richardson, judge; Austin Green, clerk; J. E. McGuire, sh'ff.

JAS. DENNIS, Sh'ff & Tax Collector,
vs.
V., S. & P. R. R. Co. } No. 1675.

Reset for Friday, 11th inst.

Minutes Setting Cause.

MONDAY, *March* 6*th*, 1882.

Court opened pursuant to adjournment.
Present: Hon. R. W. Richardson, judge; Austin Green, clerk; W. G. Kennedy, d'y sh'ff.

JAS. DENNIS, Sh'ff & Tax Collector,
vs.
V., S. & P. R. R. Co. } No. 1675.

Case set for trial to-morrow, by consent.

Minutes Trial.

TUESDAY, *March* 7*th*, 1882.

Court opened pursuant to adjournment.
Present: Hon. R. W. Richardson, judge; Austin Green, clerk; W. G. Kennedy, d'y sh'ff.

JAS. DENNIS, Sh'ff & Tax Collector,
vs.
V., S. & P. R. R. Co. } No. 1675.

Case taken up for trial, the introduction of evidence concluded, argument begun, and further argument postponed until to-morrow.

25 *Minutes Argued.*

WEDNESDAY, *March 8th*, 1882.

Court opened pursuant to adjournment.

Present: Hon. R. W. Richardson, judge; Austin Green, clerk; W. G. Kennedy, d'y sh'ff.

JAMES DENNIS, Sh'ff & Tax Collector,
vs.
V., S. & P. R. R. Co. } 1675.

Argument of case resumed. Argument concluded, and case taken under advisement by the court.

Minutes. Judgment Rendered. Motion for New Trial Filed. Overruled. Order of Appeal.

MONDAY, *May 22nd*, 1882.

Court opened pursuant to adjournment.

Present: Hon. R. W. Richardson, judge; Austin Green, clerk; J. E. McGuire, sh'ff.

JAMES DENNIS, Sh'ff & Tax Collector,
vs.
VICKSBURG, SHREVEPORT & PACIFIC R. R. Co. } 1675.

Judgment for plaintiff. See decree. Motion for new trial filed. Motion submitted by counsel, and overruled by the court.

On motion of defendant's counsel, made in open court, counsel for pl'tiff being present, for an appeal from the judgment rendered in this case, it is ordered that an appeal devolutive and suspensive be granted, returnable to the hon. supreme court of the State of
26 Louisiana at its next session at the city of Monroe, on the second Monday in June, 1882, on defendant giving bond in the sum of fifty dollars for a devolutive appeal, and in the amount required by law for a suspensive appeal.

Note of Evidence. Filed M'ch 7, '82.

5th District Court, Parish of Ouachita, State of Louisiana.

Before Hon. R. W. Richardson, judge.

JAMES DENNIS, Sheriff & Tax Collector,

vs.

THE VICKSBURG, SHREVEPORT & PACIFIC RAILROAD CO.

Plaintiff introduced the following evidence:

1. The agreement of the parties filed in this case, & marked "A." (See page 9 *et seq.*)
2. The first charter of the V., S. & Texas R. R. Co. of 1852.
3. Act of incorporation of 1853.
4. Charter of the V., S. & P. R. R. Co. of 1879.

Agreement.

(It is agreed that the printed acts of the above may be used on appeal without being copied into the transcript.)

6th. Report of the president and directors of the V., S. & T. R. R. Co., submitted to the stockholders for 1861, 1862, and 1865, setting forth the liabilities & assets of the company, filed in the case
27 of W. R. Gordon *vs.* V., S. & T. R. R. Co., marked "G" in said suit.

Agreement.

(It is agreed that this printed copy may be used on appeal without being copied into the transcript.)

7th. Printed transcript of the record in the Supreme Court of the U. S. in the case of Henry R. Jackson, Moses D. Wadley, & others, appellants, *vs.* V., S. & F. R. R. Co., Jno. T. Ludeling & others; appeal from the circuit court of the U. S. for the district of Louisiana, filed Dec. 5th, 1872, & numbered 58, including all the proceedings of any kind to the conclusion of the final decree of sale, order, and advertisement of master; sale of 1st Dec'r, 1879, process-verbal, and return with final approval and acquittance.

Agreement.

(It is agreed that this printed record may be used in case of appeal without being copied into the record.)

Admission.

It is admitted that a bridge was built across the Ouachita river in 1861 or 1862; that the contract for grading was let out west of the Ouachita river, and the road was graded and right of way was cleared for a distance of about six miles west of the Ouachita river. That that was in 1861 that the road was surveyed and located from Monroe to Red river; that that was all the actual work
28 done on the road west of the Ouachita river, except the survey from 1861 up to the filing of this suit. That the contract for building the iron bridge across the Ouachita river had been let and partially executed prior to March, 1881.

That the road between Monroe & Shreveport is now under contract & the work being done, but is yet incomplete.

That the contract for the extension of the road as far as Arcadia was signed October or November, 1881, and from Arcadia to Shreveport, February, 1882.

Evidence for Defendant.

Defendant introduces in evidence (under the agreement that the original may be used in case of appeal) certified copy of the act of incorporation of the V., S. & P. R. R. Co., 2nd Dec., 1879, with the certificate of W. A. Strong, sect'y of State, of same date.

F. P. Stubbs.

F. P. Stubbs, Esq., sworn for defendant, says:

I have been connected in one way or another with this road from its inception, and have been in a position where its operations have come directly under my observation.

I was present at the organization 2nd Dec., 1879, and at the meeting of the stockholders and directors held at that time.

The chief engineer and superintendent, Major Green, was then officially directed to let the bridge across the Ouachita river, and the continuation of the road, and the means provided to pay for it.

In consequence of the loss of all the papers relative to the original location of the line of the road between the Ouachita & Red rivers, by their being burned in 1864 by a Federal raid, the company directed Major Green to put in the field, as soon as he could organize it, a corps of engineers for the relocation of the road, and this was done with all possible dispatch.

Capt. Dabney, in charge of the reorganization, I think, finished the location to Arcadia about a year since, and at once continued his surveys & locations to Shreveport as soon as he could get his estimates made for the division from Monroe to Arcadia. The work was advertised by the company, and let, I think, in November last, and the work is now in progress from here to Arcadia, a distance of forty-eight miles. As soon as the estimates on the division from Arcadia to Red river were completed they were advertised and let, and it is now in the hands of contractors.

The contract had been made & was in course of execution when suspended by the present overflow for raising the grade in the alluvial district between the Ouachita and Mississippi rivers.

Cross-examined:

At the time the bridge across the Ouachita river was advertised and let Edmund Richardson was president of the company.

Maj. Green had been discharged as receiver at that time. He was appointed superintendent and chief engineer. When the bridge at Monroe was built the road was part of the time under the control of Ed. Richardson, as president. The erection of the superstructure and substructure has been principally made since the purchase by the present managers, but the material and the entire iron work of the superstructure was finished and paid for at the foundry before the road was purchased by the Erlanger syndicate. The contract for the extension of the road to Shreveport was let under the present management.

The completion of the road to Monroe from Delta, I think, was commenced early in the spring of 1866, and was completed in 1870.

I certify the above and foregoing to be all the evidence adduced on the trial of this case.

Witness my official signature, this 7th day of March, 1882.

AUSTIN GREEN, *Clerk D. C.*

Judgment. Filed May 22d, '82.

5th District Court, Parish of Ouachita, State of Louisiana.

JAS. DENNIS, &c., *vs.* V., S. & P. R. R. Co.

By reason of the law & the evidence adduced in the trial of said cause being in favor of the plaintiff, it is ordered, adjudged, and decreed that there be judgment in favor of the State of Louisiana, represented by the plaintiff in this suit, and against the Vicksburg, Shreveport and Pacific Railroad Company, for the sum of three thousand one hundred and eighty-five dollars, with two per cent. per month interest thereon from Dec. 1st, 1878; for the further sum of one thousand one hundred & twenty-two dollars, with two
32 per cent. per month interest thereon from the 1st of December, 1879; and for the further sum of two thousand and forty dollars, with 8 per cent. interest thereon from January 1st, 1881, the above being the State taxes for said year assessed in the parish of Madison, and for all the costs of this suit. It is further ordered, adjudged, and decreed that all the property belonging to said railroad company, with all the rolling stock, vehicles of transportation, warehouses, depots, lots, lands, and other property be declared subject to taxation, and not exempt therefrom; that the amount of the taxes as above set forth assessed for the year aforesaid be declared legal and valid taxes, and that the lien, privilege, and mortgage of the State of Louisiana on said property be recognized and rendered executory, and that the above-described property of said corporation be sold to satisfy said taxes, with the penalties and interest and all costs of this suit.

Done and signed in open court, this 22d day of May, 1882.

R. W. RICHARDSON,
Judge 5th Dist.

33 *Motion for New Trial. Filed May 22d, '82.*

DENNIS, Sh'ff & Tax Collector, *vs.* V., S. & P. R. R. Co.

Defendant moves the court for a new trial, because the judgment is contrary to the law and the evidence, & further prays for general relief, &c.

FRANK B. STUBBS, *Att'y.*

Appeal Bond. Filed June 1st, 1882.

The State of Louisiana, Parish of Ouachita, Fifth Dist. Court.

JAMES DENNIS, Sheriff and Tax Collector,
vs.
THE VICKSBURG, SHREVEPORT & PACIFIC RAILROAD CO. } No. 1675.

Know all men by these presents, that we, the Vicksburg, Shreveport & Pacific Railroad Co., as principal, & F. P. Stubbs, as security, of the parish of Ouachita, are held and firmly bound unto Austin Green, clerk of the fifth dist. court in and for said parish and State,

and his successors in office, in the sum of seventeen thousand five hundred dollars, lawful money of the United States of America; for the payment whereof, well and truly to be made, we bind ourselves, our heirs, administrators, and assigns, and each of us, *in solido*,
34 firmly by these presents. Dated and signed, this 1st day of June, A. D. 1882.

The condition of the above obligation is such that, whereas the above bounden The Vicksburg, Shreveport & Pacific R. R. Co. have applied for and obtained an order for a suspensive appeal from a certain final judgment rendered against them in our said court on the 22nd day of May, 1882, in the above entitled and numbered suit:

Now, therefore, if the said The Vicksburg, Shreveport & Pacific R. R. Co. shall well & truly prosecute their said appeal with effect, and shall satisfy whatever judgment may be rendered against them, or that the same shall be satisfied out of the proceeds of the sale of their estate, real and personal, if they be cast in their said appeal, then this obligation to be null and void; otherwise to be & remain in full force and effect against principal and security.

OTTO PELOCH,
President V., S. & P. R. R. Co.,
By FRANK P. STUBBS, *Att'y.*
F. P. STUBBS.

Signed in the presence of and approved by—
AUSTIN GREEN, *Clerk D. C.*

35 THE STATE OF LOUISIANA, *Parish of Ouachita:*

CLERK'S OFFICE, 5TH DISTRICT COURT.

I, Austin Green, clerk of said court, do certify that the foregoing twenty-nine pages contain a true, correct, and complete transcript of all the pleadings and documents filed, all the evidence adduced, and all the proceedings had (except such evidence as is omitted herefrom pursuant to agreements of counsel on pages 22 and 23 of this record) in the case No. 1675 on the docket of said court, entitled James Dennis, sheriff and tax collector, *vs.* The Vicksburg, Shreveport and Pacific Railroad Company.

In testimony whereof, I hereto sign my name and affix my seal of office, this 14th day of June, 1882.

[SEAL.] AUSTIN GREEN,
Clerk D. C.

No. 1058. Filed June 14th, 1882.

ROB. J. WILLSON,
Clerk Supreme Court.

36 *Transcript Filed.*

Proceedings in the supreme court of the State of Louisiana, holding sessions at Monroe, La.

Transcript in the case of—

JAMES DENNIS, Sheriff and Tax Collector,
vs.
THE VICKSBURG, SHREVEPORT AND PACIFIC RAILROAD COMPANY. } No. 1058.

Filed June 14th, 1882.

ROB. J. WILLSON,
Cl'k S. C't.

Minutes Supreme Court.

SUPREME COURT, MONROE, LA., *June 15th*, 1882.

Court met pursuant to adjournment.

Present: Their Honors Edward Bermudez, chief justice; Felix P. Poché, Robert B. Todd, Charles E. Fenner, associate justices.

JAMES DENNIS, Sh'ff & Tax Collector,
vs.
THE VICKSBURG, SHREVEPORT AND PACIFIC RAILROAD CO. } No. 1058.

This case was called in its regular order on the docket, taken up, and argued by T. O. Benton and John Stone, for plaintiffs, and W. B. Pittman, for the defendant. The case was then submitted.

37 *Application for Rehearing. Filed June 12th*, 1882.

Application for rehearing. Filed June 12th, 1882.

ROB. J. WILLSON,
Cl'k S. C't.

In Supreme Court, at Monroe, June, 1882.

E. DENNIS, Sh'ff & Tax Collector,
vs.
V., S. & P. R. R. Co. } No. 1058.

Appeal from Ouachita.

To the hon. the chief justice and associate justices of the supreme court:

With great respect, defendant, through its counsel, representing that the opinion and decree of your honors is based on error, moves the court for a rehearing on the issues presented, for that the judgment of the court *a qua* was based solely upon the decision of the Gross Tate case, in the 33rd An., & this court, in its review of said opinion, has erred in its application of the principles for the construction of the rules governing statutory contracts; that there is a wide difference in the rules applicable to the contruction of statutes in which the sovereign, as a simple act of bounty-grace, grants a right, privilege, or immunity, and those which themselves contain or clearly imply a consideration, and therefore in the nature
38 of a contract; that the rules of construction for statutory contracts are in no wise different from those applicable to contracts between citizens. In following the letter of the contract the interpretation of the court does violence to the manifest spirit

and purpose of the contracting parties, which was that during the years of its trial and building the R. R. Co. was to be encouraged in its efforts to improve the property of the State and its citizens, and thus enhance the taxable value to the sovereign, by granting the enterprize immunity from the burden of taxation.

Wherefore defendant prays for a rehearing of this cause in the interest of a great enterprize now fully embarked in its active purpose to comply with the spirit of the original charter, & hoping soon to consummate the long-desired public necessity of a completed railway in north Louisiana from the Mississippi river to the Texas State line.

And, in duty bound, it will ever pray.

FRANK P. STUBBS,
Of Counsel.
BOATNER & LIDDELL,
Of Counsel.

39 And taken under advisement by the court on the pleadings and on briefs on file.

Minutes. Decree Rendered.

SUPREME COURT, MONROE, LA., *June 17th*, 1882.

Court met pursuant to adjournment.

Present: Their Honors Edward Bermudez, chief justice; Felix P. Poché, Robert B. Todd, Charles E. Fenner, associate justices.

The Hon. Chief Justice read the opinion & decree in the following case:

JAMES DENNIS, Sheriff & Tax Collector,
vs.
THE VICKSBURG, SHREVEPORT AND PACIFIC RAILROAD CO. } No. 1058.

We find no error in the judgment appealed from, which is affirmed, with costs.

Minutes. Decree on Application for Rehearing.

SUPREME COURT, MONROE, LA., *June 23d*, 1882.

The court met pursuant to adjournment.

Present: Their Honors Edward Bermudez, chief justice; Felix P. Poché, Robert B. Todd, Charles E. Fenner, associate justices.

The Hon. Chief Justice read the opinion & decree of the court in the following case on application for rehearing:

40 JAMES DENNIS, Sheriff and Tax Collector,
vs.
THE VICKSBURG, SHREVEPORT AND PACIFIC RAILROAD CO. } No. 1058.

Application for rehearing refused.

The Hon. Chief Justice read the opinion & decree in the following case:

Opinion & Decree. Filed June 17th, 1882. *Rob. J. Willson, Cl'k S. C.*

JAMES DENNIS, Sheriff and Tax Collector,
vs.
THE VICKSBURG, SHEVEPORT AND PACIFIC RAILROAD Co. } No. 1058.

Appeal from the district court for the parish of Ouachita.

E. B., F. P. P., R. B. T., Ch. E. F.

The defendants appeal from a judgment, condemning them to pay three years' State taxes, aggregating over six thousand dollars. They resist payment, averring that they are exempt from such taxes, by reason of the purchase made in 1879, of the property, franchises, and immunities of the Vicksburg, Shreveport and Texas R. R. Co., chartered by the Legislature in 1853 (art. 228). They claim that by the second section of the act of incorporation that company was relieved from the payment of all and any taxation from the beginning of its existence, and was to continue so during ten years after the completion of the road within State borders. We do not
41 propose to determine whether the defendants have acquired the exemption claimed, for the reason that if the first company did not own it, the defendant did not acquire it. Pretermitting the several questions which were presented and argued by the able counsel on both sides, we will proceed to consider the sole, main issue which the case offers, which is:

Whether the exemption granted in 1853 by the State, conceding it *arguendo* to have enured to the defendants, does or not relieve them from taxes falling due before the completion of the road, which is as yet unfinished, and will so remain for some time.

The section relied upon reads:

"That the capital stock of said company shall be exempted from taxation, and its road, fixtures, workshops, warehouses, vehicles of transportation, & other appertenances shall be exempt from taxation for ten years after the completion of said road within the limits of the State." In the case of Baton Rouge, G., T. & O. R. R. Co. *vs.* Kirkland, sheriff, 33 A., 622, an identical question was presented, which we solved, deciding that the company was not entitled
42 to the exemption asked. The candid and respectful manner in which the opinion in that case was criticised by the counsel for the defendants in their printed, oral, and manuscript argument has proved a cause of satisfaction to us, as it has furnished us the opportunity of listening to valuable considerations which had not been urged in the previous case, and of reviewing an important ruling, which might have been erroneously made.

The claim now is, that the exemption accorded in 1853, & which has passed to the defendants, exonerates them from taxes, as well before as after the completion of the road, but for not more than ten years afterwards; if this pretension were recognized, the second section would be made to read that the property of the company "shall

be exempt from taxation" from the creation of the corporation and "for ten years after the completion of said road within the limits of the State." It is a principle so universally recognized, that exemption laws must be construed strictly, that the mere announcement of the proposition establishes it. It applies not only to general laws, but also to special enactments, such as charters of cor-
43 porations of any class, all property must be taxed except such as is expressly relieved from the burden, either by valid Federal or local legislation.

It is likewise rudimentary, that however liberal the civil law may be in the interpretation of language used by the sovereign, (Domat, sec. 17, Liv. Pril. Règles du Dr. en Général til I,) it is an admitted canon of construction that when the sovereign grants he does so munificently and unequivocally, and that when a serious doubt arises as to what was intended by the sovereign, that doubt is fatal, and the plain meaning must be adhered to. In 21 Penn. St., 22, it was said by Chief Justice Black: "In the construction of a charter, to be in doubt is against the corporation. If the usefulness of the company would be increased by extending (its privileges), let the Legislature see to it, but remember that nothing but plain English words will do it."

Referring to that decision, Cooley, C. L., p. 495 & 395, says, this is the sound doctrine, and should be vigilantly observed and enforced. Bradly *vs.* N. Y. & N. H. R. R. Co., 21 Com., 306.

In 22 Wall., 757, the United States court said: The taxing
44 power is vital to the functions of the Government, it helps to sustain the social compact, and to give it efficacy; it is intended to promote the general welfare. It reaches the interest of every member of the community. It may be restrained by contract in special cases, for public good, when such contracts are not forbidden. But the contract must be shown to exist; there is no presumption in its favor. Every reasonable doubt should be resolved against it. Where it exists it is to be rigidly scrutinized, and never permitted to extend, either in scope or duration, beyond what the terms of the concession clearly require. It is in derogation of public right, and narrows a trust created for the good of all." Affirmed and reiterated on 93 U. S., 597.

In the case of the Fertilizing Co. *vs.* Hyde Park, 97 U. S., 666, involving a legislative contract, Mr. Justice Swayne said: "The rule of construction in this class of cases is, that it shall be most strongly against the corporation. Every reasonable doubt is to be resolved adversely; nothing is to be taken as conceded but what is given in unmistakable terms, or by an implication equally clear. The
45 affirmative must be shown; silence is negative, and doubt is fatal to the claim. The doctrine is vital to the public welfare. It is axiomatic in the jurisprudence of this court. 24 How., 301; 22 Wall., 527; 93 Otto, 595. Exemptions are granted either by general or special laws; when they are granted as a gratuity, as a bounty, they can be revoked at pleasure, which, when they enter into and form part of a contract in the shape of a charter, they must continue in force as agreed upon. The rules of construction in both

cases are the same as to meaning & scope, but obviously differ as to the duration. In the last case, the time for which the exemption was consented, must be strictly construed, and must be neither extended nor restricted.

No rule is better settled than that charters of incorporation are to be construed strictly against the corporations. The just presumption in every such case is, that the State has granted in express terms all that it designed to grant at all. See 82 Ill., 177; 21 Conn., 306; 1 Black, 358; 19 Penn., 144; 10 Burr, 442; 4 Peters, 514; 10 Pet., 420; 41 Md., 50; 9 Ga., 213; 21 Penn. St., 22; Grant on
46 Corp., 38; Field on Corp., 53; Cooley on C. L., 395, 396; Potter's Dwarris on Stat., 256, 7, 8, p. 49, 50; Sedgwick Const. of Stat. & C. L., 190, 196, 286, 250. In a recent case decided by us at New Orleans we had occasion to apply those principles, denying an extension of corporate existence for 25 years, which did not clearly result from the acts of incorporation. New Orl's Carrolton R. R. Co. *vs.* New Orleans, 34*a*, p. —. It is another axiom that when a law or contract is clear and free from all ambiguity, the letter of it is not to be disregarded under pretext of pursuing its spirit. R. C. C., 13. *Quoties in verbis nulla est ambiguitas, ibi nulla expositio contra verba fiendo est.* The rule is not to be disputed that in a doubtful case an agreement is interpreted in favor of him who has contracted the obligation. R. C. C., 1957. *In dubuis semper quod minimum sequisseur.* When the text relied upon in 33*a* was first presented to our consideration we felt no hesitation to read it so, that the exemption claimed had not yet begun to run, and would not do so, unless the road was first completed, and then for ten years only afterwards, consideration, favored by the lights thrown on the subject by the defendants has not
47 convinced us that we then erred, but has served rather to strengthen us in our previous convictions. We find the letter of the text perfectly unambiguous, and such as requires no interpretation at our hands. We are told that the intention of the Legislature was to confer an exemption from the adoption of the charter until after ten years from the completion of the road. The intention of the law-giver, as well as that of contracting parties, and of testators, is to be ascertained not by what persons concerned in profiting by advantages claimed, say or affirm it is, but it is to be gathered and deduced from the words or language used for the purpose of garb[l]ing the thought, the intention. In such cases we are to ascertain not *quod voluit sed quod dixit;* in other words, we are to ascertain *quod voluit* by interpreting *quod dixit.*

It is admitted that this intention is not to be found expressed in its fullness in the text invoked, which in its force possibly justifies the meaning already attached to it, but it is insisted that such intention must be searched by inquiring into the manner in
48 which the State and defendants have treated the provision of law in question. It is insisted that if this be done the the court will conclude in favor of the exemption, as it appears clearly that from 1853 to 1877 the State never dreamed to levy any tax on the property of the corporation, and that in the case of State

vs. Morgan, 28*a*, 482, affirmed in 3 Otto, 222, in which a dispensation existed and an exemption was resisted, it never entered the mind either of the attorney general or of the court to read the exemption clause as a qualified one, to take effect only after the termination of the road. The patent intention of the Legislature was to exempt the property only after the completion of the work. Its occult, or latent intention, not appearing, must be deemed as conducive only to that indulgence or immunity.

If for the purpose of eking out the motive which induced the Legislature to make the grant it was legitimate to invade, as the defendants have assumed to do, the field of conjectures or speculation, it might be advanced as a proposition more than plausible that in according the immunity the State proposed to secure
49 a prompt execution of the work & to place the beneficiaries of her bounties in the *in the* impossibility of defeating her object by never finishing the road, in never reaching, though approximating, its terminus.

Besides, how can it be claimed that the State meant to exempt from the inception of corporate existence up to ten years after consummation of the object in view, when there is not to be found a solitary instance in which such concession or immunity ever was consented by the State? A reference to exemptions granted in other cases snow that they were allowed to take place after the road had been entirely finished. It is not to our knowledge that such exemption was ever granted out of the State, except on the expressed condition that the work would have to be done within a limited and fixed period.

In other respects it is enough to answer that the omission of officers to perform that which it is their duty to accomplish, however long the suspension, cannot be considered as justified by law, or by the State when no law or authority is produced in support of the derelection. The abstention of these officers from levying
50 a tax, at least if sanctioned by some unknown or mysterious higher authority, can only be reviewed as inspired by a spirit of benevolence in favor of an organization which had labored under great embarrassments and sustained considerable injury and loss. The resumption of the privilege of taxation was the mere exercise of a legitimate right.

If the inaction of such officers could produce the effect claimed the logical consequence would be the lodging into the hands of such agents the very power of taxation which the Legislature alone can validly wield and effectual authority to amplify restricted immunities consented by the law-giver. In answer to the other objection, it will suffice to remark that it does not appear that there was any necessity of raising, and if raised, of determining the point of exemption, as the court held that the exemption claimed was personal, inalienable, could not be, and has not been transferred. (28*a* 482; 3 Otto, 222). To conclude, with the defendants would be to inject and incorporate into the section a most important provision, which
51 was not placed in it by the Legislature, and which this court has not the power of interpolating into it to any extent. We

think that the expressed intention of the Legislature was to provide that the property of the corporation should be exempt during ten years, to begin after the completion of the road within the borders of the State, and that previous to such completion it should not be exempt from taxation.

Maledicta expositio quæ corrumpit textum.

It is unnecessary to determine in this controversy whether the exemption passed or not to the defendants. When the road will have been completed, & an attempt is made to collect a tax from them, it will be time enough to decide the question. We find no error in the judgment appealed from, which is affirmed with costs.

Petition for Writ of Error. Filed June 24th, 1882.

ELIAS S. DENNIS, &c.,
vs.
VICKSBURG, SHREVEPORT & PACIFIC RAILROAD CO.

To the Hon. Edward Bermudez, chief justice of the supreme court of Louisiana:

52 The defendant in the above-entitled cause respectfully represents that it feels itself aggrieved by the judgment rendered in the above-entitled cause by the supreme court of Louisiana, on the 23rd day of June, A. D. 1882, affirming the decree of the fifth district court of Ouachita parish, and prays a writ of error to the Supreme Court of the United States, because defendant claims that the decision of the said supreme court allows the exercise of an authority under the State of Louisiana which is a violation of the Constitution of the United States, forbidding the impairing of contracts.

Defendant further prays that said writ of error may operate as a supersedeas upon defendant entering into bond in the penal sum and condition required by law.

VICKSBURG, SHREVEPORT &
PACIFIC RAILROAD COMPANY,
By F. P. STUBBS, *Att'y.*

Order Granting Writ of Error. Filed June 24th, 1882.

Supreme Court of Louisiana.

ELIAS S. DENNIS, Sheriff, &c.,
vs.
VICKSBURG, SHREVEPORT AND PACIFIC RAILROAD COMPANY.

53 It is ordered that the clerk of the circuit court of the United States for the western district of Louisiana shall issue a writ of error from the Supreme Court of the United States to the supreme court of the State of Louisiana, in that the decision of the latter court may be reviewed by the former court, touching the validity of certain laws and authorities claimed under the State of Louisiana by the plaintiff, appellee in the above-entitled cause, which laws

and authorities the defendant, appellant, claims to be in violation of the provisions of the Constitution of the United States, prohibiting States from impairing the obligations of contracts.

Said writ of error will operate as a supersedeas upon defendant entering to bond in the amount and conditioned as the law requires in the sum of eleven thousand dollars.

Witness my hand and seal this 24th day of June, A. D. 1882.

E. BERMUDEZ,
Chief Justice of the Supreme Court of Louisiana.

54 *Bond. Filed June 24th*, 1882. *Rob't J. Willson, Clerk S. C.*

ELIAS S. DENNIS, Sheriff, &c.,

vs.

VICKSBURG, SHREVEPORT AND PACIFIC RAILROAD COMPANY.

Know all men by these presents, that we, Otto Plock, as president of the Vicksburg, Shreveport and Pacific Railroad Company, as principal, and Francis P. Stubbs and Thomas N. Conner, as sureties, are held and firmly bound unto Elias S. Dennis, sheriff and tax collector, in the full and just sum of eleven thousand dollars, to be paid to the said Elias S. Dennis, sheriff and tax collector, certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this 24th day of June, in the year of our Lord one thousand eight hundred and eighty-two.

Whereas lately, at a term of the supreme court of Louisiana in a suit depending in said court, between Elias S. Dennis, sheriff, &c., and the Vicksburg, Shreveport and Pacific Railroad Com-
55 pany, judgment was rendered against the said Vicksburg, Shreveport and Pacific Railroad Company, and the said Vicksburg, Shreveport and Pacific Railroad Company having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and citation directed to the said Elias S. Dennis, sheriff, &c., citing and admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington, the 2d Monday of October next:

Now the condition of the above obligation is such, that if the said Vicksburg, Shreveport and Pacific Railroad Company shall prosecute its writ of error to effect, and answer all damages and costs, but if the said Vicksburg, Shreveport and Pacific Railroad Company fails to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

OTTO PLOCK, [SEAL.]
President V., S. & P. R. R. Co.,
By F. P. STUBBS, *Att'y.*
F. P. STUBBS. [SEAL.]
T. N. CONNER. [SEAL.]

Sealed and delivered in presence of—
H. H. RUSSELL.
J. H. MITCHELL.

56 Approved by— E. BERMUDEZ,
Chief Justice S. C. La.

Before me, Robert J. Willson, clerk of the supreme court of the State of Louisiana, holding sessions at Monroe, on this the 24th day of June, A. D. 1882, personally came and appeared Francis P. Stubbs and Thomas N. Conner, who, being severally sworn by me, declared that they each own in their own names property in the parish of Ouachita, over and above their entire liabilities and legal exemptions, worth more than eleven thousand dollars, the amount for which they have severally signed as sureties on the above bond, & that they are solvent for said amount, each of them, over and above all their liabilities, contingent or actual.

FRANK P. STUBBS.
T. N. CONNER.

Sworn to and subscribed before me, this 24th June, A. D. 1882.
[SEAL.] ROB. J. WILLSON,
Clerk S. Ct.

Approved: E. BERMUDEZ, *C. J. La.*

57 *Citation. Filed July 22nd, A. D.* 1882.

ELIAS S. DENNIS, Sheriff, &c.,
vs.
VICKSBURG, SHREVEPORT AND PACIFIC RAILROAD COMPANY.

The United States of America, Greeting:

To Elias S. Dennis, sheriff of Madison parish, Louisiana:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October, 1882, next, pursuant to a writ of error, filed in the clerk's office of the supreme court of the State of Louisiana, wherein the Vicksburg, Shreveport and Pacific Railroad Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 24th day of June, in the year of our Lord one thousand eight hundred and eighty-two.

E. BERMUDEZ,
Chief Justice S. C. La.

58 On this 29th day of June, in the year of our Lord 1882, personally appeared before me, the subscriber, Walton Farrar,

who makes oath that he delivered a true copy of the within citation to Elias S. Dennis, sheriff, in person.

WALTON FARRAR.

Sworn to and subscribed before me this 29th day of June, A. D. 1882.

[SEAL.] S. S. P. DANGERFIELD,
Not. Pub.

Filed July 22nd, 1882.

ROB. J. WILLSON,
Clerk Supreme Court.

Writ of Error. Filed June 24th, 1882.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the supreme court of the State of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of pleas which are in the said court of Louisiana, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Elias S. Dennis, sheriff, &c., and the Vicksburg, Shreveport and Pacific Railroad Company, wherein was drawn in question
the validity of a statute or an authority exercised under said
59 State, on the ground of their being repugnant to the Constitution of the United States, as impairing the obligation of contracts, and the decision was in favor of the validity of said statute or authority, a manifest error hath happened, to the great damage of the said Vicksburg, Shreveport and Pacific Railroad Company, as by its complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the 2nd Monday of October next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid, being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of
60 the said Supreme Court, the 24th of June, in the year of our Lord one thousand eight hundred and eighty-two.

[SEAL.] JULIUS ENNEMOSER,
D'y Clerk of the Circuit Court of the United States for the Western District of Louisiana.

Allowed by—
E. BERMUDEZ,
Chief Justice S. C. La.

Filed June 24th, 1882.

ROB. J. WILLSON,
Cl'k S. C't La.

Agreement of Counsel. Filed Aug. 1st, 1882.

In the Supreme Court of the United States.

VICKSBURG, SHREVEPORT & PACIFIC RAILROAD COMPANY
vs.
JAMES DENNIS, Sheriff & Tax Collector.

It is agreed that the printed reports of the president and directors of the Vicksburg, Shreveport & Texas R. R. Co. for the years 1861, 1862, & 1865, offered in evidence by defendant on trial of the suit in district court of Louisiana, and afterwards by agreement considered as part of the record in the supreme court of Louisiana, and also the printed official copy of the record in the suit of Henry
61 R. Jackson *et als. vs.* The Vicksburg, Shreveport and Texas R. R. Co., John T. Ludeling, *et als.*, before the Supreme Court of the United States, may be attached to and become a part of the record in the Supreme Court of the United States, and may be referred to as evidence without being copied by the clerk of the supreme court of Louisiana.

W. B. PITTMAN,
Att'y for Pl'tiff.
RICHARDSON & McENERY,
THOS. O. BENTON,
Att'ys for Def't.

Filed Aug. 1st, 1882.

ROB. J. WILLSON,
Cl'k S. C't of La.

62 *Charter of the Vicksburg, Shreveport and Pacific Railroad Company.*

Filed in evidence in suit No. 1675, Dennis, tax collector, *vs.* V., S. & Pacific R. R. Co., March 7th, 1882.

AUSTIN GREEN,
Clerk D. C.

No. 228.

An act to incorporate the Vicksburg, Shreveport and Texas Railroad Company.

Whereas a corporation styled the "Vicksburg, Shreveport and Texas Railroad Company" has been created under the act of the Legislature entitled "An act for the organization of corporations for works of public improvement and utility," approved March 11th, 1852, which said corporation was enacted in the following words, to wit:

Charter of the Vicksburg, Shreveport and Texas Railroad Company.

We, the undersigned, agree to form ourselves into a corporation, under the laws of the State of Louisiana, for the purpose of constructing and making a railroad from the Mississippi river, at a point opposite Vicksburg, running westward through the northern
63 part of the State of Louisiana, by way of Monroe, on the Ouachita river; thence west by the most direct practicable route to Shreveport, on Red river; thence west to the line of the State of Texas. And for that purpose we have formed and agreed to the annexed charter, and have signed the same and added to our signature a statement of the amount of our stock subscriptions to said company.

SEC. 1. The name and title of said corporation shall be "The Vicksburg, Shreveport and Texas Railroad Company," and the place chosen for its domicil is fixed at the town of Monroe, in the parish of Ouachita, State of Louisiana, and the duration of its charter is fixed at twenty-five years.

SEC. 2. The said corporation is established for the purpose of constructing, making, and maintaining a railroad, and also a magnetic telegraph on the line thereof, from a point on the Mississippi river opposite Vicksburg, thence west to the line of the State of Texas, via Monroe and Shreveport. The said road to be used for the purposes of transporting freight of every kind and passengers, and all such purposes for which railroads are used. The said railroad to be constructed on such a scale as shall serve for the main trunk of
64 a continuous line of communication westward to the Pacific Ocean via El Paso.

SEC. 3. The capital stock of the company is fixed at two millions five hundred thousand dollars, divided into one hundred thousand shares of twenty-five dollars each. A payment of five per cent. on the amount of each share shall be made at the time of subscribing. The subsequent payments of capital stock shall be made on each share of the capital stock *pro rata*, in such sums and at such periods, as shall be fixed by the board of directors: Provided, That no call shall be made for more than ten per cent. on the whole amount of each share of the capital stock at one time, and that ninety days' notice of each call for payments of stock shall be given by publication in one newspaper in Vicksburg, Richmond, Monroe, Claiborne, & Shreveport: And provided, That not more than two calls for payment of capital stock shall be made in any successive twelve months.

SEC. 4. The said corporation shall go into operation and be organized as soon as shares of capital stock to the amount of two hundred and fifty thousand dollars shall have been subscribed.

SEC. 5. The business of the corporation shall be conducted at its domicil in the town of Monroe, in the parish of Ouachita,
65 State of Louisiana, by a board composed of fifteen directors, who shall be stockholders. A quorum to do business shall consist of at least eight directors.

The directors shall elect one of their body as president of the company at their first meeting after their election. At all elections by

the stockholders, and at all the meetings of the stockholders, each share shall be entitled to one vote. Votes may be given in person or by proxy.

SEC. 6. The president of the company is the officer designated as the one on whom legal service of all process or citation against the company made be made, and the company agree to be bound by service of process or citation, whether made on the president in person or left to his addres at the office of the company, at its domicil, in the bands of any of its officers.

SEC. 7. The first board of directors shall be chosen as soon as the lists of subscription shall amount to two hundred and fifty thousand dollars. This election shall be held at the domicil of the corporation. The notice for the election of directors shall be given by publication, made thirty days preceding the election, in one newspaper published weekly in Vicksburg, Shreveport, Richmond, Monroe, and Claiborne. The first election of directors shall be held
66 under the superintendence of three of the commissioners. All subsequent elections under the superintendence of three commissioners, to be appointed from amongst the stockholders by the board of directors, for the time being. The first board of directors shall hold office until the first Monday of October, 1853. The election for directors shall be on that day, and annually thereafter on the first Monday of October in each year. But a failure to elect directors at any time shall not dissolve the corporation, but the board in office shall continue the exercise of its functions until a new board can be legally elected. All notices of elections of directors and meetings of stockholders after the first election shall be given by publication, thirty days in advance, in at least one newspaper in Vicksburg, Richmond, Monroe, Claiborne, & Shreveport.

SEC. 8. The following-named persons are hereby appointed commissioners for the purpose of receiving subscriptions to the stock of said corporation, viz:

William A. Williams, William McFee, J. R. B. Jones, W. H. Crawford, J. H. Carson, John Hill, F. M. Goodrich, F. B. Richardson, W. T. Oliver, J. T. Amonett, J. M. Wilkinson, E. B. Towns, Edw. Brennan, M. S. Osborne, C. J. Bradley, C. H. Morrison,
67 T. W. Phillips, John T. Sterling, D. R. Thompson, J. H. Stevens, W. F. Bond, W. J. McDonald, W. C. Copes, J. T. Wafer, Sr.; Felix Lewis, Dr. J. Gibbs, John G. Key, Andrew Lawson, T. Fort, R. J. Looney, Col H. L. Douglass, B. M. Johnson, L. P. Crain, Richard King, John H. Johnson, W. C. Smedes, W. P. Swiney, C. K. Marshall, W. H. Sparks, S. W. Oakey, H. Frellsen, Charles Phillips.

Said commissioners shall have power to appoint deputies for receiving subscriptions.

The lists of subscriptions shall be closed on the first Monday of October, 1852, or, if the subscriptions shall not amount to two hundred and fifty thousand dollars at that date, then they shall be closed as soon as said amount shall have been subscribed. Public notice of the time of opening the subscription list shall be given in at least one newspaper in Vicksburg, Richmond, Monroe, Claiborne,

and Shreveport fifteen days before the opening thereof. As soon as the subscription lists shall be closed they shall be returned to the commissioners appointed for the parish of Ouachita, whose duty it shall be to have the same registered in the office of the recorder of mortgages of said parish, according to law.

68 Immediately after the election of the first board of directors the subscription lists shall be opened for a term of six months, and public notices thereof shall be published in at least one news paper in Vicksburg, Richmond, Monroe, Claiborne, and Shreveport, and the said board of directors shall have power to appoint agents for receiving subscriptions. At the end of said term of six months, if the amount of subscriptions shall exceed the capital required, a meeting of stockholders and subscribers shall be held to determine whether the capital shall be increased to the whole amount of subscription; and if the capital be not so increased, then the number of shares subscribed shall be reduced by reductions from the largest subscriptions, so as not to diminish the number of shares of any subscriber, whilst another remains with a larger number of shares; and if there be any deficiency, or if the amount of stock subscribed does not amount to the full amount of the capital stock fixed for this corporation, then the subscription lists shall be opened and closed, from time to time, at the discretion of the directors, for the time being, until the whole capital shall be subscribed.

69 SEC. 9. In case of failure on the part of any subscriber to pay the installments on his stock as required, the board of directors shall have the option, after thirty days' written notice to the defaulter, of forfeiting the stock and selling it for the benefit of the company, or of compelling, by suit, the payment of such installments; and no stockholder shall be permitted to vote whilst in default for non-payment of any installment of stock.

SEC. 10. All meetings of stockholders called for the purpose of increasing or diminishing the capital stock of the company, or for any of the purposes enumerated in the fifth section of the act of the Legislature of Louisiana, entitled "An act for the organization of corporations for works of public improvement and utility," shall be composed of persons holding in their own right, or as agents for others, at least three-fourths of the stock of the company already subscribed, in order to take valid and binding action in the premises. At all other meetings of stockholders, and at all elections, a majority of stock shall be represented; and in this latter

70 case, if such majority be not present or represented, the meeting shall be adjourned for one week, and the vote of the majority of the stock present and represented at such adjourned meeting shall bind the company in the same manner as if a majority of all the stock were present and represented.

SEC. 11. Any vacancy in the board of directors occurring during the time for which such director was to serve may be filled by a vote of the board of directors for the time being.

SEC. 12. The president and directors of said corporation shall have the power to do everything necessary for the construction, repair, and maintaining the railroad hereinabove described, with as many

tracks as they may deem necessary, to determine the location of said road between a point opposite Vicksburg, on the Mississippi river, by way of Monroe, on the Ouachita river, and Shreveport, on Red river, thence west to Texas, and to make and construct all works whatsoever which they may deem necessary for the proper completion and working of said railroad. They shall have power to make all necessary contracts for the purposes aforesaid,
71 and to purchase with the funds of the company all machines, vehicles, teams, slaves, and other equipments deemed to be necessary or useful for the purposes of the company.

SEC. 13. No money shall be borrowed by said company to an amount exceeding fifty thousand dollars, unless authorized by a vote of two-thirds of the whole amount of the stock subscribed, represented at a meeting of the stockholders called for that purpose. But the board of directors may contract for the furnishing of iron, equipments, and other necessary supplies and labor, on such credits as they may deem proper, & may mortgage the property of the company, if necessary, to secure the payment of such contract.

SEC. 14. All rules relative to the declaring of dividends or division of profits, and all other by-laws deemed necessary for the proper and regular transaction of business, may be made by the president and board of directors; but they shall be subject to repeal, change, amendment, or modification by the stockholders at their meeting.

SEC. 15. A stated annual meeting of the stockholders shall be held one week before the election of directors to receive
72 the report of the last year's operations and business, and for examining into the condition of the affairs of said corporation, at which meeting a full statement of the financial & other affairs of the company shall be laid before the meeting by the president and directors then in office. Besides this meeting the president and directors may call others when they think proper, and it shall be their duty at any time, on the written request of stockholders representing one-fourth of the stock of the company, to call a meeting of the stockholders to take into consideration any matter affecting the interest of the company.

SEC. 16. Stock books shall be kept in the office of the company. Certificates of stock shall be issued to the shareholders, to be signed by the president of the board of directors for the time being, and no transfer of stock shall be binding on the company until made on its stock books; no transfer of stock shall exempt the party transferring it from the obligation of paying instalments afterwards called
73 for, until fifty per cent. on each share shall have been paid.

SEC. 17. The board of directors shall be authorized to contract specially for work, labor, and material, to be furnished to the company, payable in whole or in part in stock of the company, until the whole amount of capital stock of the company shall have been subscribed.

SEC. 18. If any subscriber shall be taxed by virtue of any law or ordinance for the payment of subscriptions to the company, he shall have the right of reducing the number of his shares by an amount equal to that of the tax so imposed; but this right must be exercisd

within sixty days from the date of such law or ordinance, after which time it shall not be allowed.

SEC. 19. The board of directors of said company shall have the power of making such contracts and arrangements as they may deem proper for the connection of any branch road with said above-described railroad, so as to increase the business and revenues of said last-mentioned road.

SEC. 20. That this company retains the exclusive right of making and using the magnetic telegraph within the space donated
74 for the right of way to the company; and the president and directors of this company shall have the right of making such arrangements and contracts as they may see fit with any telegraph company near this line of road for the use of this company.

SEC. 31. That the president and directors shall cause said railroad to be constructed in sections, to commence as nearly simultaneous as may be, one section to commence on the Mississippi river and run west, one section to commence on the Ouachita river and run either east or west, or both, as may be thought best, and one section to commence on Red river and to run east or west, or both, as may be thought best: Provided, That the stock subscribed in each parish or corporation, or a majority in amount, shall have the right to designate on what section of said road they desire their stock subscriptions to be used.

SEC. 22. The directors of said company shall be authorized to elect annually, on the first Monday of October, a treasurer and secretary, and require from the treasurer bond and security in such amount as may be fixed by the by-laws of the company; and that they shall have the right of fixing the compensation
75 of the president, secretary, and treasurer: Provided, That the said officers shall be stockholders in this company: And provided, That no board of directors shall change the compensation of the said officers during the time of their service: And provided, That the board of directors shall have the authority to remove any of these officers at their discretion.

SEC. 23. At the expiration of this charter, or whenever the dissolution of the corporation shall render necessary its liquidation, three commissioners shall be elected by the stockholders, whose duty it shall be to take possession of the property of the company and conduct its business to a final liquidation, on such terms and in such manner as shall be determined by a meeting of the stockholders regularly convened for that purpose; and if, at the expiration of the present charter, a majority of the stockholders in number and amount shall desire to renew the same for a further term, the stockholders dissenting from such shall be bound to transfer their stock to those desiring the renewal at its fair value, to be fixed by two appraisers mutually chosen for that purpose; and, in
76 case of disagreement, the appraisers chosen shall select an umpire.

SECT. 1. Therefore be it enacted by the Senate and House of Representatives of the State of Louisiana in General Assembly convened, That the stockholders of said Vicksburg, Shreveport &

Texas Railroad Company are hereby specially created into a body corporate and politic, under the conditions & limitations and with all the rights, powers, and liabilities recited in the preamble to this act; and the said Vicksburg, Shreveport and Texas Railroad Company, so specially created, shall have full power to sue and be sued, plead and be impleaded, and to do and perform all other acts, and exercise all the rights and privileges incident to corporations.

SEC. 2. Be it further enacted, &c., That the capital stock of said company shall be exempt from taxation, and its roads, fixtures, workshops, warehouses, vehicles of transportation, and other appurtenances shall be exempt from taxation for ten years after the completion of said road within the limits of this State.

SEC. 3. Be it further enacted, &c., That the president, engi-
77 neer, clerks, agents, and *and* servants of said company shall be exempt from jury duty and from military duty, except in case of invasion or insurrection.

SEC. 4. Be it further enacted, &c., That said company shall have the right of way through all lands owned by the State of Louisiana, to the extent of one hundred and fifty feet on each side of said road, and be authorized to cut and use the timber and such other materials thereon as they see fit within one mile on either side, for the purposes of said road: Provided, That this privilege of cutting timber shall continue as long as the land shall remain the property of the State.

SEC. 5. Be it further enacted, &c., That the capital stock of said company be, and the same is hereby, fixed at four millions of dollars, and the same shall be divided into one hundred and sixty thousand shares of twenty-five dollars each: Provided, That the president and directors of said company shall have power to convert said shares into shares of one hundred dollars each.

SEC. 6. Be it further enacted, &c., That the president &
78 directors of said company shall have power to buy or accept the conveyance of the charter, property, appurtenances of any railroad company within or without the limits of this State whenever the route of said railroad company shall form a continuous line with that of the Vicksburg, Shreveport & Texas Railroad Company, and the said company shall also have power to contract to perform the transportation on any lateral railroad owned by other parties: Provided, The said lateral railroad shall be so united with the Vicksburg, Shreveport & Texas railroad as to form a branch therefrom.

SEC. 7. Be it further enacted, &c., That the president and directors of the said Vicksburg, Shreveport and Texas Railroad Company may borrow from time to time such sums of money as may be required for the construction of said road, over and above the amount received from subscriptions to its capital stock, provided that the amounts borrowed do not exceed four millions of dollars; and said president and directors be, and are hereby, authorized to se-
79 cure said loans by mortgaging the property of the company in whole or in part, as they shall deem expedient, and any mortgage so given need not be reinscribed to continue said mortgage in force; and the president and directors of said company may

confer on the holder of any bonds or bond issued for money for the use of said company the right to convert the principal due thereon into the stock of said company at any time, not exceeding five years from the date of said bond, under such regulations as the president and directors may see fit to adopt, provided that the capital stock of said company shall never exceed four millions of dollars.

SEC. 8. Be it further enacted, &c., That whenever the president and directors of said company may see fit to borrow money on the pledge of the tax which may at any time be subscribed by any of the parishes, towns, or cities to the stock of said company, under ordinances providing for said subscription, it shall be lawful for the president or acting president of said company, under a resolution of the directors authorizing the issue of bonds or notes on a
80 pledge of the tax subscription which may be due by any of the said parishes, towns, or cities, to go before any notary public in said parishes, towns, or cities and make an act of registry of said resolution, which shall then have the force of a pledge in favor of the holder of said bonds or notes to secure the payment thereof, when the same shall have been paraphed by the notary in the following manner:

First. The notary shall inscribe in the act of registry the date of each paraph, in regular order, and state also the amount of the bond or note paraphed; and he shall paraph no bond or note not described in the resolutions of the board of directors, and intended thereby to to be issued and secured by pledge.

Second. No notice shall be required to render this pledge valid, except a service of a copy of the resolution of the board of directors of said company upon the mayors of the cities and towns, and upon the presidents of the police juries of the several parishes which have or may subscribe to the capital stock of said company: Provided, further, That the provisions of this act shall apply to any
81 pledge of the same tax already authorized and made under a resolution of the board of directors of said company.

SEC. 9. Be it further enacted, &c., That said Vicksburg, Shreveport and Texas Railroad Company shall have perpetual existence, unless said corporation is dissolved by a vote of three-fourths of its stockholders, at a meeting called specially for that purpose, or unless said corporation should fail or be insolvent; and in case of failure or insolvency, the president and directors of said company, to be elected by the stockholders expressly for that purpose, shall be created commissioners to liquidate the affairs of said company, but with powers limited to the collection and payment of the debts of said company, the preservation of its property, and the distribution of its effects to those who may be entitled thereto.

SEC. 10. Be it further enacted, &c., That whenever the Vicksburg, Shreveport & Texas Railroad Company desire any change in this act of incorporation, or any additional rights, powers, immunities, or privileges, public notice shall be given of the same, by advertisement in one or more newspapers published in Vicksburg,
82 Monroe, Shreveport, Claiborne parish, and New Orleans, at least six months in advance of the passage of any law by

which said change may be effected, or said rights, powers, immunities, or privileges granted; and no alteration of or addition to the charter of said company shall be made in a manner different from that provided in this section.

SEC. 11. Be it further enacted &c., That whenever any number of stockholders holding three-fourths of the amount of stock now subscribed to said company shall accept the amendments contained in the preceding sections of this act, said amendment shall be incorporated into the charter of said company, and take the place of any of the provisions of the original charter that may be inconsistent therewith.

SEC. 12. Be it further enacted &c., That this act shall take effect from and after its passage.

E. WARREN MOISE,
Speaker of the House of Representatives.
W. W. FARMER,
Lieutenant Governor and President of the Senate.

Approved April 28th, 1853.

P. O. HEBERT,
Govenor of the State of Louisiana.

A true copy.

ANDREW S. HERRON,
Secretary of State.

83 *An Act of the State of Louisiana, Approved March 8th*, 1877,

Entitled "An act to provide for the transfer of rights and franchises to purchasers of railroads, under foreclosure of mortgage upon the same; to provide for the organization, by such purchasers, of new railroad companies; to authorize such new companies to borrow money, and to secure the same by mortgage, and to invest such organized companies with certain rights and powers, and to impose on them certain duties.

SEC. 1. Be it enacted by the Senate and House of Representatives of the State of Louisana, in General Assembly convened, That any railroad company chartered by this State, or any other State, and whose road lies, in whole or in part, in this State, which has heretofore or may hereafter mortgage its franchises, road bed, superstructure, and other property, and said mortgage shall afterwards be foreclosed by any court of the State, or of the United States, having jurisdiction thereof, the purchasers at said sale shall have the same right to operate said railroad in this State as the incorporated com-
84 pany had who executed said mortgage; and said purchasers thereof shall be entitled to, and be invested with all the rights, franchises, privileges, and immunities appertaining to the property, or franchises, or both, so sold, in as full and complete a manner as the company is, or was, by virtue of its charter of incorporation and amendments thereto, or by virtue of any other law or laws of this State.

SEC. 2. Be it further enacted, &c., That the purchasers of said rail-

road, its property, franchises, etc., as aforesaid, may fix the amount of capital stock representing the property bought, divide the same into shares of one hundred dollars each; and the holders of such stock may meet together, adopt a name for the company, and organize by the election of a board of directors, of such number as they may see fit, not less than six; one of them shall reside in this State (each share of said stock being entitled to one vote). And said board of directors may elect a president, and such other officers as they may deem expedient for the proper management of said property, fix their duties, terms of office, and compensation, and adopt by-laws not inconsistent with the laws of this State.

85 SEC. 3. Be it further enacted, &c., That upon an organization being effected, as aforesaid, by the election of a board of directors, and upon said board of directors filing with the secretary of State of this State a statement, signed by said directors, showing the name of said corporation, amount of capital stock, shares into which the same is divided, number and residence of board of directors, where the road is situated, and the name or names by which it was chartered and has heretofore been known, the secretary of State shall certify the fact of such filing, and the said company, upon so filing said statement of its board of directors aforesaid, shall be a body corporate, under the name chosen as aforesaid, with all the rights, powers, privileges, immunities, and franchises granted to the company or companies (whose road and franchises were sold and bought as aforesaid), and which had been granted to said company or companies by the act of its incorporation, or acts amendatory thereof, in as full and perfect a manner as if the new company chartered under the provisions of this act was granted a charter

86 of incorporation, in the very words of the act or acts of incorporation under which the company whose road was sold existed; and such company so formed under this act may borrow money for the purposes of its incorporation, issue its bonds, and execute a mortgage or mortgages on all or any of its rights, franchises, privileges, immunities, or property to secure the same.

SEC. 4. Be it further enacted, &c., That the principal office of said company formed under this act and branch offices may be established at such place or places, in or out of this State, as the board of directors may determine, for the convenient transaction of business; and meetings there held and resolutions adopted shall be lawful and binding: Provided, That an office be maintained and preserved in the State of Louisiana, where citations may be served, and that said company be always represented at said office by an officer, agent, or employee, upon whom service of citation can be made in accordance with the laws of this State.

SEC. 5. Be it further enacted, &c., That nothing in this act contained shall be so construed as to interfere in any manner

87 with the valid prior mortgage liens, if any, upon the property, rights, franchises, or privileges of the road so sold as aforesaid.

SEC. 6. Be it further enacted, etc., That this act shall take effect and be in force from and after its passage.

Approved March 8th, 1877.

Organization Under the Foregoing Act.

STATE OF LOUISIANA, *City of New Orleans:*

Whereas under and in pursuance of an act of the Legislature of the State of Louisiana, approved March 8th, 1877, entitled "An act to provide for the transfer of rights and franchises to purchasers of railroads, under foreclosure of mortgage upon the same, to provide for the organization by such purchasers of new railroad companies, to authorize such new companies to borrow money and to secure the same by mortgage, and to invest such organized companies with certain rights and powers, and to impose on them certain duties the purchasers of the railroad property and franchises heretofore owned and operated by a corporation known as "The Vicksburg Shreveport and Texas Railroad Company," more recently in possession of and operated by a corporation known as the North Louisiana and Texas Railroad Company, have agreed to or-
88 ganize as a corporation, and for that purpose have fixed the amount of the capital stock representing the said property so bought by them at three millions of dollars ($3,000,000), divided into thirty thousand shares of one hundred dollars ($100) each, and have adopted as the name of such company "The Vicksburg, Shreveport and Pacific Railroad Company," and have elected a Board of directors to the number of eight (8), being the persons whose names are hereto subscribed:

Now, therefore, the undersigned directors of said corporation, in pursuance of the act of the Legislature aforesaid, do hereby state and certify—

First. That they have adopted as the name of the said corporation the "Vicksburg, Shreveport and Pacific Railroad Company."

Second. That they have fixed the amount of its capital stock at three millions of dollars, representing the property bought, and have divided the same into shares of one hundred dollars each, making thirty thousand shares.

89 Third. That number of the board of directors to manage such corporation is eight, and the directors thereof for the first year, or until their successors are elected, are as follows, to wit: Edmund Richardson, residing in Jackson, Miss.; Thos. M. Smedes, residing in Delta, Louisiana; Alfred B. Pittman, residing in Vicksburg, Miss.; Henry R. Jackson, residing in Savannah, Georgia; Lemuel P. Grant, residing in Atlanta, Georgia; William M. Wadley, residing in Atlanta, Georgia; Edward Hoopes, residing in Philadelphia, Penn.; Henry B. Plant, residing in New York, N. Y.

Fourth. That the road so purchased, now owned and to be operated by the corporatin so formed, and designated as the Vicksburg, Shreveport and Pacific Railroad Company, is situated in the State of Louisiana, between the town of Delta, on the Mississippi river, and the line dividing the State of Louisiana and Texas, extending

through the town of Monroe, on the Ouachita river, and the city of Shreveport, on Red river.

Fifth. That the corporation which originally constructed said railroad was chartered and known by the name of the Vicksburg,
90 Shreveport & Texas Railroad Company, which said company continued to be the owner of the said railroad up to the date of a judicial sale of the same under the decree of the circuit court of the United States for Louisiana, on the first day of December, A. D. 1879.

Sixth. That the company operating the said railroad prior to the time when it was placed in charge of a receiver by the decree of the said court was known as the North Louisiana and Texas Railroad Company.

In witness whereof, we have hereunto set our hands, this second day of December, A. D. 1879.

(Original signed.)

E. RICHARDSON.
ALFRED B. PITTMAN.
WM. M. WADLEY.
By HENRY R. JACKSON.
THOS. M. SMEDES.
HENRY R. JACKSON.
L. P. GRANT.
EDWARD HOOPES.
H. B. PLANT.

Deposited for filing, and filed in the office of the secretary of State of the State of Louisiana, on Tuesday, the 2d day of December, A. D. 1879, at fifteen minutes past one o'clock p. m.

91 In faith whereof, I hereunto sign my name and affix my official seal, this 2d day of December, A. D. 1879.

(Signed) OSCAR ARROYO,
Assistant Secretary of State.

OFFICE OF THE SECRETARY OF STATE,
STATE OF LOUISIANA.

I, the undersigned, secretary of State of the State of Louisiana, do hereby certify that the above and foregoing is a true copy of the statement of the organization of the Vicksburg, Shreveport and Pacific Railroad Company as deposited, filed, and recorded in this office in book one, for the recording of proclamations and other instruments of writing, at pages 698 and 699.

In faith whereof, I have hereunto signed my name, and affixed the seal of the State of Louisiana, at the city of New Orleans, this second day of December, A. D. 1879.

(Signed) WILL. A. STRONG,
Secretary of State.

I, Robert J. Willson, clerk of the supreme court of the State of La., holding sessions at Monroe, La., do hereby certify that
92 the above and foregoing thirty pages contain a true, correct, and accurate copy of the printed charter of the Vicksburg,

Shreveport and Pacific Railroad Co., of 1879, offered in evidence on the trial of the case of James Dennis, sh'ff & tax collector, *vs.* The Vicksburg, Shreveport & Pacific Railroad Co.

In testimony whereof, I hereunto set my official signature and affix the seal of my office at the city of Monroe, on this the 9th day of August, 1882.

[SEAL.] ROB. J. WILLSON,
Clerk Supreme Court.

UNITED STATES OF AMERICA, }
Supreme Court of the State of Louisiana, } *ss:*

I, Robert J. Willson, clerk of the supreme court of Louisiana, do hereby certify that the writings annexed to this certificate and contained within the foregoing pages from 0 to 88, inclusive, are true copies of their respective originals on file and remaining in my office.

93 In testimony whereof, I have caused the seal of said court to be hereunto affixed at the city of Monroe, in the State of Louisiana, on this 29th day of September, in the year of our Lord one thousand eight hundred and eighty-two.

[SEAL.] ROB. J. WILLSON,
Clerk Supreme Court, Monroe, La.

94 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the supreme court of the State of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of pleas which are in the said court of Louisiana, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Elias S. Dennis, sheriff, &c., and The Vicksburg, Shreveport & Pacific Railroad Company, wherein was drawn in question the validity of a statute or an authority exercised under said State on the ground of their being repugnant to the Constitution of the United States, as impairing the obligation of contracts, and the decision was in favor of the validity of said statute or authority, a manifest error hath happened, to the great damage of the said Vicksburg, Shreveport & Pacific Railroad Company, as by its complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the 2nd Monday of October next, in the said Supreme Court,

95 to be then and there held, that the record and proceedings aforesaid, being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the 24th of June, in the year of our Lord one thousand eight hundred and eighty-two.

[SEAL.] JOHN W. WHEATON, *Clerk*,
By JULIUS ENNEMOSER,
D'y Clerk of the Circuit Court of the United States for the Western District of Louisiana.

JOHN W. WHEATON,
Clerk of the Circuit Court of the United States for the Western District of Louisiana.
Per JULIUS ENNEMOSER,
D'y Clerk.

Allowed by—
W. BURMEDUZ,
Chief Justice S. C., La.

96. [Endorsed:] Dennis, sheriff, &c., *vs.* V., S. & P. R. R. Co. Writ of error. Filed June 24th, 1882. Rob. J. Willson, cl'k S. c't.

Endorsed on cover: Louisiana sup. court. No. 394. The Vicksburg, Shreveport & Pacific Railroad Company, plaintiff in error, *vs.* Elias S. Dennis, sheriff of Madison parish, Louisiana. Filed 16th October, 1882.

116-665

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JAMES H. McKENNEY,
CLERK.

Robert Clarke & Co., Printers, Cincinnati. *March, 1885.*

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

The Vicksburg, Shreveport, and Pacific Railroad Company,
Plaintiff in Error,

No. ~~204~~.] 121 *versus*

Elias S. Dennis, Sheriff of Madison Parish, Louisiana,
Defendant in Error.

On Motion to Dismiss Cause or Affirm Judgment.

Brief for Plaintiff in Error, by

GEO. HOADLY,
EDGAR M. JOHNSON;
EDWARD COLSTON,
Its Counsel.

Robert Clarke & Co., Printers, Cincinnati. *March, 1885.*

IN THE

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No. 394.] *versus*

Elias S. Dennis, Sheriff of Madison Parish, Louisiana, *Defendant in Error.*

On Motion to Dismiss Cause or Affirm Judgment.

Brief for Plaintiff in Error, by
GEO. HOADLY,
EDGAR M. JOHNSON;
EDWARD COLSTON,
Its Counsel.

The brief of counsel for defendant in error in support of this motion proceeds upon the ground that the *opinion* of the Supreme Court of Louisiana merely interprets a State statute, and that this restricted application prevents the raising of any Federal question or question

of conflict with the Federal Constitution. In order to simplify the discussion, we shall not deny that in appearance the judgment of the Supreme Court of Louisiana was confined to the interpretation of the statute, but if the interpretation so given is one not authorized by the words of the statute, and results in the impairment of the obligation of a contract, obviously the distinction taken by opposing counsel is more metaphysical than real, and their position, if sustained by the Court, would open the way to rendering nugatory the safeguards of the Federal Constitution in any case where a State Court might choose to rest their judgment upon an asserted meaning of a statute without attacking the statute's validity. Thus in any given case a State Court, by the exercise of a little ingenuity, might deprive the injured party of all redress, by so framing its opinion and decree (in the case at bar, the two are one) as to make it appear that there was no question made of the validity of a statute, but merely an interpretation of its meaning. The law conferring jurisdiction on the Supreme Court of the United States, under which the writ of error in the case at bar issued, seems to us of itself conclusive of the point raised by opposing counsel. It is section 709 Rev. Stat. U. S., and the material part is as follows: "A final judgment or decree in any suit in the highest Court of a State, in which a decision in the suit could be had, . . . where is drawn in question the validity of a statute of, or *an authority exercised under any State* on the ground of their being repugnant to the *Constitution*, treaties, or laws of the United States, and

the decision is in favor of their validity, . . . may be re-examined and reversed or affirmed in the Supreme Court upon a writ of error." (The italics are, of course, our own.) To place the application of section 709 to the case at bar beyond question, it will be well to give a succinct account of proceedings below, as these are disclosed by the Record.

On March 14, 1881, the defendant in error filed his petition (Record, p. 1) in the District Court for the Parish of Ouachita, seeking to subject the property of plaintiff in error to assessment and taxation under the general tax laws of the State. Thereafter, an agreement as to the questions to be litigated (Record, p. 5) was come to between the parties, and on April 16, 1881, the plaintiff in error filed its answer (Record, p. 6), setting up an exemption from taxation under two acts of the Louisiana Legislature, namely, an act of April 28, 1853, incorporating the Vicksburg, Shreveport, and Texas Railroad Company, and an act of March 8, 1877, authorizing the formation of railroad corporations for the purpose of purchasing at foreclosure sale the property of insolvent railroad corporations. The answer averred the formation of plaintiff in error under the latter act, its purchase of the property, franchises, etc., of the Vicksburg, Shreveport, and Texas Railroad Company at foreclosure sale, and its acquisition pursuant to the provisions of the act of March 8, 1877, of the exemption from taxation possessed by the Vicksburg, Shreveport and Texas Railroad Company. The pleadings then raised substantially two questions—

firstly, whether the Vicksburg, Shreveport and Texas Railroad Company, at the time suit was brought, possessed the exemption from taxation asserted; and, secondly, whether, granting the possession of the exemption by the Vicksburg, Shreveport and Texas Railroad Company, the plaintiff in error acquired it by the purchase and proceedings under the Act of March 8, 1877. The charter of the Vicksburg, Shreveport and Texas Railroad Company will be found on page 26 of the Record; the act of April 28, 1853, on page 31 of the Record; the act of March 8, 1877, on page 34 of the Record; and the proceedings preliminary to the organization of the plaintiff-in-error corporation, on pages 36 et seq. of the Record.

Upon these questions judgment went against plaintiff in error here in the District Court of the Parish of Ouachita, and was affirmed in the Supreme Court of Louisiana. It is not our purpose upon this motion to go into the main case, or to discuss the soundness in point of law of the judgment of the Supreme Court of Louisiana, but we insist that the real effect of that judgment was to sustain the validity of the "exercise" of the taxing power, which is assuredly an "authority" under a "State." We do not question the authority of the cases cited in the brief of counsel for defendant in error, nor do we think it necessary to distinguish them from the case at bar; on the contrary, we think they do this of themselves. In those cases there clearly was no Federal question raised, nor was there sustained by Court below the "validity of an authority exercised under any State."

To cite authority or argument to show that the levy or collection of taxes by a State officer is an "exercise of authority under" the "State," would be a work of supererogation, and it seems to us that it ought to be a sufficient answer to the present motion that the effect of the judgment of the Supreme Court of Louisiana is to sustain the validity of the exercise of such an authority by the Sheriff of Madison Parish.

It must be obvious that this question of the validity of the authority asserted by the Sheriff of Madison Parish *must* have been raised in the case, and that in point of fact it was the only question in it. The Sheriff brought his suit for taxes under the general law; the Vicksburg, Shreveport, and Pacific Railroad Company resisted, on the ground that its special privilege and immunity derived from the act of April 28, 1853 (Record, 26 to 34), the act of March 8, 1877 (Record, 34 to 36), and its purchase of the property, privileges, etc., of the Vicksburg, Shreveport, and Texas Railroad Company (see Record, 36, et seq.) entitled it to exemption. The Supreme Court of Louisiana upon final hearing so interpreted the act of April 28, 1853, as to sustain the validity of the authority asserted by the sheriff, as is shown by its affirmance of the judgment of the District Court of the Parish of Ouachita, which decreed (Record, 14) "that there be judgment in favor of the State of Louisiana. . . . . and against the Vicksburg, Shreveport and Pacific Railroad Company, for the sum of," etc.; "that all the property belonging to said railroad company . . . be declared subject to taxation;" . . . "that the

amount of the taxes . . . assessed for the year aforesaid be declared legal and valid taxes, and that the lien . . . . of the State of Louisiana on said property be recognized, . . . and that the above described property of said corporation be sold to satisfy said taxes," etc. If this be not a judgment sustaining the validity of the exercise of an authority under a State, we should be at a loss to devise one that would be.

In concluding our observations upon the question of jurisdiction, we desire to call the attention of the Court to the case of *Morgan* v. *Louisiana*, reported in 93 U. S. 217. That case is in form exactly on all fours with the case at bar. Of it this Court took jurisdiction without question, and its decision is in form wholly upon the interpretation of a statute. The State of Louisiana sued Morgan for certain taxes; he defended by setting up certain statutes from which he claimed to derive exemption. Judgment went against Morgan in the Supreme Court of Louisiana; he brought his writ of error in this Court, and your Honors interpreted the statutes against his claim (they were in essentials different from those relied upon by plaintiff in error in the case at bar), and affirmed the judgment complained of. It needs not that we should dwell upon *Morgan* v. *Louisiana* to show its complete analogy to the case at bar, but if it be necessary to make any direct answer to the portion of defendant in error's motion which asks for an affirmance, or for a dismissal with damages, we ask this Court to note that in that case a statute couched in the identical words of the act of April 28, 1853, was relied on, and its effect interpreted by

this Court. From which we insist that there must be inferred a conclusive rebuttal of any presumption that the writ of error in the case at bar was sued out for purposes of delay.

As further showing that this Court takes jurisdiction without hesitation of cases like the case at bar, and on the ground, too, that they involve a Federal question, we cite the case of the Memphis and Little Rock Railroad Company, 112 U. S. 609.

Respectfully submitted.

GEORGE HOADLY,
EDGAR M. JOHNSON,
EDWARD COLSTON,
Counsel for Plaintiff in Error.

116-665

Robert Clarke & Co., Printers, Cincinnati. [*April, 1885.*

IN THE

Supreme Court of the United States

OCTOBER TERM, 1884.

Vicksburg, Shreveport, and Pacific Railroad Company,

Plaintiff in Error.

No. 394. *vs.*

Elias S. Dennis, Sheriff of Madison Parish, Louisiana,

Defendant in Error.

ON MOTION OF DEFENDANT IN ERROR TO DISMISS CAUSE OR AFFIRM JUDGMENT.

SUPPLEMENTAL BRIEF FOR PLAINTIFF IN ERROR by

GEORGE HOADLY,
EDGAR M. JOHNSON, and
EDWARD COLSTON,
Its Counsel.

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GEORGE HOADLY,
EDGAR M. JOHNSON, and
EDWARD COLSTON,
Its Counsel.

In *Murray* v. *Charleston*, 96 U. S. 432, the court say at p. 441: "The form and mode in which the Federal question is raised in the State court is of minor importance, if, in fact, it was raised and decided. The act of Congress of 1867, gives jurisdiction to this court over final judgments in the highest courts of a State in suits 'where is drawn in question the validity of a statute of, or an authority exercised under, any State, on

the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of their validity.' Not a word is said respecting the mode in which it shall be made to appear that such a question was presented for decision." And again at the bottom of p. 441, it is said: "In questions relating to our jurisdiction, undue importance is often attributed to the inquiry whether the pleadings in the State court expressly assert a right under the Federal Constitution. The true test is not whether the record exhibits an express statement that a Federal question was presented, but whether such a question was decided, and decided adversely to the Federal right." The court also cites *Crowell* v. *Randall*, 10 Peters, 368, and *Armstrong* v. *Treasury*, 16 Peters, 281.

We cite in this relation *Williams* v. *Bruffy*, 102 U. S. 248. In *Williams* v. *Louisiana*, 103 U. S. 637, the State of Louisiana brought an action for injunction against the State Auditor and the State Treasurer to restrain the allowance and payment of a claim upon certain State bonds issued under an act of the Legislature which the State asserted to be void as in contravention of a constitutional provision. In the opinion of this court in the case, Mr. Justice Miller says at p. 639: "Counsel for defendants in error insist that the writ of error should be dismissed for want of jurisdiction."

"They say that the suit is one in the courts of their own State, to which the State is a party plaintiff, against its own officers, and the decision rested entirely on the construction of the Constitution and laws of the State, and that no question of Federal law is involved in it. If this be strictly true, their contention should be sustained."

After thus setting out the claim of the defendant in error,

the similarity of which to the claim made upon the present motion by the defendant in error in the case at bar is obvious, the court proceeded to examine the case upon the merits and in the exercise of its jurisdiction affirmed the judgment. It hardly seems necessary to point out the analogy between the case at bar and *Williams* v. *Louisiana*, from which we have just quoted. We need but add that in the case at bar is present an element that appears to have been absent from *Williams* v. *Louisiana;* by reference to pp. 7 and 8 of the Record it will be seen that the Federal question was raised specifically by the answer of the Vicksburg, Shreveport and Pacific Railroad Company, filed in the court of first instance.

Respecting that portion of the present motion which asks in the alternative for an affirmance of the judgment of the Supreme Court of Louisiana, we call the attention of this court to the case of *Davies* v. *United States*, decided March 16, 1885, and reported in 5 Supreme Court Reporter, 696. We cite this case as the latest accessible utterance of this court upon the subject. Mr. Chief Justice Waite, in the opinion, says: "The original rule allowing a motion to affirm to be united with a motion to dismiss, was promulgated May 8, 1876 (91 U. S. vii), and in *Whitney* v. *Cook* 99 U. S. 760, decided during the October term, 1878, it was ruled that the motion to affirm could not be entertained unless there appeared on the record at least some color of right to a dismissal. This practice has been steadily adhered to ever since and, in our opinion, prevents our entertaining the motion to affirm in this case."

In the record in the case at bar the only thing that could possibly be held to lend such color of right is the circumstance—

for, as this court has repeatedly held, it is no more—that the opinion of the Supreme Court of Louisiana purports only to construe a State statute. We have no apprehension that this alone, particularly when the other record facts, referred to both in our main brief and in this, are considered, will be held sufficient for an affirmance.

Respectfully submitted,

GEORGE HOADLY,
EDGAR M. JOHNSON,
EDWARD COLSTON,
Counsel for Plaintiff in Error.

16-665

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

The Vicksburg, Shreveport and Pacific Railroad Company,

Plaintiff in Error.

No. 121.] *vs.*

Elias S. Dennis, Sheriff of Madison Parish, Louisiana,

Defendant in Error.

IN ERROR TO THE SUPREME COURT OF LOUISIANA.

BRIEF FOR PLAINTIFF IN ERROR.

GEORGE HOADLY,
EDGAR M. JOHNSON,
EDWARD COLSTON,
Counsel for Plaintiff in Error.

Robert Clarke & Co., Printers, Cincinnati.] *[October, 1885.*

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

The Vicksburg, Shreveport and Pacific Railroad Company,

Plaintiff in Error.

No. 121.] *vs.*

Elias S. Dennis, Sheriff of Madison Parish, Louisiana,

Defendant in Error.

IN ERROR TO THE SUPREME COURT OF LOUISIANA.

BRIEF FOR PLAINTIFF IN ERROR.

This case was before the court at its last term upon motion filed by defendant in error to dismiss cause or affirm judgment under the rules. That motion was overruled and the cause now comes up for consideration upon the merits.

STATEMENT OF CASE.

The Vicksburg, Shreveport and Texas Railroad Company was incorporated by an act of the legislature of

Louisiana, approved April 28, 1853 (see Record, p. 26). This act contained *inter alia*, the following (see Record, p. 32):

"SEC. 2. *Be it further enacted, etc.*, That the capital stock of said company shall be exempt from taxation, and its roads, fixtures, workshops, warehouses, vehicles of transportation, and other appurtenances shall be exempt from taxation for ten years after the completion of said road within the limits of this state."

After incorporation, and prior to the civil war, some work was done by the company upon its railroad (Record, p. 12).

In 1877 the Legislature of Louisiana passed a general law, entitled "An act to provide for the transfer," etc. (Record, p. 34), which law contained, among other things, the following (Record, p. 34):

"SEC. 1. *Be it enacted, etc.*, That any railroad company chartered by this state, or any other state, and whose road lies, in whole or in part, in this state, which has heretofore or may hereafter mortgage its franchises, road-bed, superstructure, and other property, and said mortgage shall afterwards be foreclosed by any court of the state, or of the United States, having jurisdiction thereof, the purchasers at said sale shall have the same right to operate said railroad in this state as the incorporated company had who executed said mortgage: and said purchasers thereof shall be entitled to, and be invested with all the rights, franchises, privileges, and immunities appertaining to the property, or franchises, or both, so sold, in as full and complete a manner as the company is, or was, by virtue of its charter of incorporation and amendments thereto, or by virtue of any other law or laws of this state."

The act then proceeds to regulate the manner in which the purchasers referred to may organize, and in sec. 3 (Record, p. 35) confers upon the purchasers the franchise to be a corporation,

"with all the rights, powers, privileges, immunities, and franchises granted to the company or companies (whose road and franchises were sold and bought as aforesaid), and which had been granted to said company or companies by the act of its incorporation, or acts amendatory thereof, in as full and perfect a manner as if the new company chartered under the provisions of this act was granted a charter of incorporation, in the very words of the act or acts of incorporation under which the company whose road was sold existed; and such company so formed under this act may borrow," etc.

On the first day of December, 1879, the railroad, property, and franchises of the Vicksburg, Shreveport and Texas Railroad Company were sold under foreclosure by order of the Circuit Court of the United States for the District of Louisiana, and the next day the purchasers organized themselves into a corporation, under the provisions of the above quoted act of March 8, 1877 (Record, p. 34), under the name of the Vicksburg, Shreveport and Pacific Railroad Company. And since the reorganization much work has been done upon the railroad by the V. S. & P. R. R. Co., but it had not been completed at the time of bringing this suit on the 14th of March, 1881, in the District Court for the Fifth Judicial District of Louisiana, holding sessions in and for the Parish of Ouachita.

Plaintiff's petition (Record, p. 1) alleged that there were due from the defendant taxes for 1877 and succeeding years on property of the defendant, and asked that the railroad, with all the property described be declared subject to said taxes; that the lien of the State of Louisiana for said taxes be recognized, and that the property be sold to satisfy them (Record, p. 3).

An agreement (Record, p. 5) was entered into between the parties, and after various proceedings, including a judgment for plaintiff, the cause was appealed to the Supreme Court of Louisiana, by which court in an opinion and decree,

filed June 17, 1882 (Record, p. 18), judgment was rendered affirming the judgment of the court below, from which this appeal is taken.

ARGUMENT.

The Supreme Court of Louisiana considered only the question whether the Vicksburg, Shreveport and Texas Railroad Company was entitled by the second section of its charter (Record, p. 27) to the exemption claimed from taxes on its property from the date of incorporation until ten years after the completion of its road. The reason given being the very sound one that if the Vicksburg, Shreveport and Texas Railroad Company never had this exemption, its successor, the appellant corporation, never could have succeeded to it. We therefore feel it necessary only to discuss that question.

The language of the second section of the act incorporating the Vicksburg, Shreveport and Texas Railroad Company is as follows (Record, p. 32):

> "SEC. 2. *Be it further enacted, etc.*, That the capital stock of said company shall be exempt from taxation, and its roads, fixtures, workshops, warehouses, vehicles of transportation, and other appurtenances shall be exempt from taxation for ten years after the completion of said road within the limits of this state."

It will be observed that the exemption from taxation of the capital stock is unqualified and perpetual; it must therefore begin at once, *i. e.*, at the moment of the creation of the corporation. About this there is, indeed there can be, no controversy. We contend that the exemption conferred by the second clause of the section quoted begins at the same moment, though its duration is limited to ten years after the completion of the corporation's railroad. It seems to us that

without much stronger reason than the language of the incorporating act affords, it is forcing its meaning to hold that the exemption of property, etc., does not begin at the same moment as the exemption of capital stock, but begins only at the moment of the completion of the corporation's railroad. We concede that grants in charters are to be construed strictly against the grantee, yet since the object of such grants is obviously to benefit the grantee, it can not be reasonable to so construe the grant as to deprive the grantee of a really important part of the contemplated advantage. There is no doubt much force in the suggestion of the Supreme Court of Louisiana (Record, p. 21), that the legislature might have limited the immunity from taxation to a period beginning with the completion of the railroad, for the purpose of expediting the work of construction, and of placing the railroad in operation. But it should be recollected that in 1853 capital for a new enterprise was not procured with the facility which has followed upon the growth of the country in wealth. The building a railroad neither was, nor was regarded as, so simple a matter as it has become to-day, and these conditions naturally influenced the legislature of the states, particularly of the western and south-western states, when bills for chartering railroad companies were brought before them.

It is matter of common knowledge that Louisiana, like many other states, was greatly in need of transportation facilities in 1853. It had, before the granting of the charter, relied upon in the case at bar, granted not a few special privileges and exemptions to railroad corporations, and it continued this policy long afterward. It is not strange then that its legislature should have considered the difficulties under which a new company must labor; that it should have, as we contend it did, exempted the Vicksburg, Shreveport and

Texas Railroad Company from taxes on its equipment and property of all kinds during the process of construction of the railroad, as well as for a limited time after the completion of the work. The period of construction was one in which the earning power of the company must be infinitesimal, if indeed it existed at all, while the experience in such works, which was at that date available, made it impossible to estimate with any thing like exactness the length of time necessary. Yet during the whole time the company would be obliged to pay its servants, contractors, and purveyors of material. If, as was contemplated and permitted by section 6 of its charter (Record, p. 32), it mortgaged its property to procure funds, it would be obliged to pay interest upon the debt, although having no resources whereupon to draw except the principal sum itself.

What, then, is more natural or reasonable, in view of the doubtful issue of such enterprises, as it appeared in 1853, than that the Legislature of Louisiana should have thought it expedient to exempt the Vicksburg, Shreveport and Texas Railroad Company from the payment of taxes upon its property until such time as the railroad might produce a steady return, or the necessity of the company's reorganization upon a different basis should become apparent? What the event of this particular enterprise was, and whether it proved the expediency of the exemption we contend for may be gathered from the language of the Supreme Court of Louisiana in its opinion in the case at bar, when it says (Record, p. 21), referring to the admitted omission by the taxing officers of Louisiana to levy taxes upon the property of the Vicksburg, Shreveport and Texas Railroad Company, through a long series of years,

"The abstention of these (taxing) officers from levying a tax, at least if sanctioned by some unknown or mysterious higher authority, can only be reviewed as inspired by a spirit

of benevolence in favor of *an organization which had labored under great embarrassments and sustained considerable injury and loss.*"

The italics are our own.

But we are not without authority of this court for the proposition we sustain. The case of *Morgan* v. *Louisiana*, 93 U. S. 217, involved a charter provision expressed in the very words of that whereof a construction is sought in the case at bar. At least the opinion of Mr. Justice Field in that case cites, on p. 219, the charter provision on which the plaintiff in error relied, as follows:

"The act provided that the capital stock of the company should be exempt from taxation, and that the works, fixtures, workshops, warehouses, vehicles of transportation, and other appurtenances of the company should be exempt from taxation for ten years after the completion of the road within the limits of the state. . . ."

Allowing for alterations in the verbs rendered necessary by translation into indirect discourse, and for the substitution of "works" for "roads," we perceive no possible difference between this act and section 2 of the act incorporating the Vicksburg, Shreveport and Texas Railroad Company (Record, p. 32).

In the case of *Morgan* v. *Louisiana* (*supra*), the question was whether Morgan, who was the purchaser of the property and franchises of the New Orleans, Opelousas and Great Western Railroad Company at judicial sale, had by his purchase succeeded to the exemption conferred upon the said corporation by the act of which the material part is quoted above from Mr. Justice Field's opinion. At the time of Morgan's purchase, the act of 1877 (Record, p. 34) had not been passed, and he was compelled to rely for the establishment of his right to the exemption upon a general law much less comprehensive. Accordingly this court, following the

rule laid down by it in so many cases, held that Morgan did not succeed to this exemption, and affirmed the judgment of the Supreme Court of Louisiana. We cite this case for the purpose of calling to the attention of the court a point which it seems to us is conclusive of the case at bar. It appears from the facts, as they may be gathered from Mr. Justice Field's opinion, that the New Orleans, Opelousas and Great Western Railroad, *never was completed* within the limits of Louisiana, either before or after its acquisition by Morgan. If, then, the contention of the defendant in error in the case at bar be sound, the New Orleans, Opelousas and Great Western Railroad Company never became entitled to the exemption of its *property* from taxation conferred by its charter, and, *a fortiori*, Morgan never acquired that privilege or immunity. But neither the taxing officers of Louisiana nor their learned counsel, nor the Supreme Court of Louisiana, nor this court, would seem to have had any doubt, for no one of them, either in argument or opinion, proceeded upon any other than the assumption that the New Orleans, Opelousas and Great Western Railroad Company had been entitled to the exemption, though Morgan, the purchaser of its property and franchises, failed to acquire it for the want of that regrant, as we may call it, which this court has held is necessary in such cases. Manifestly, if the question raised in the case at bar had been raised in Morgan's case, and decided as the defendant in error insists in the case at bar it ought to be decided, your Honors would have had no occasion to determine the point upon which Morgan's case actually turned. Yet, though it was part of that case that the railroad of the New Orleans, Opelousas and Great Western Railroad Company never was completed within the limits of Louisiana—just as it is part of this case that the railroad of the Vicksburg, Shreveport and Texas Railroad Company,

and of its successor, the plaintiff in error, was not completed within the limits of Louisiana at the time the taxes here sought to be recovered were levied—notwithstanding this, at least three hearings of Morgan's case, in the court of first instance, in the Supreme Court of Louisiana and in this court, failed to suggest to any one, even to your Honors, that the exemption from taxation, which was substantially in the very words of that which we rely on in the case at bar, had not begun to run. On the contrary, Morgan's case was decided by your Honors solely, so far as we can perceive, upon the ground that the New Orleans, Opelousas and Great Western Railroad Company *was* entitled to the exemption, but that Morgan, the purchaser of its property and franchises, was not so entitled because, your Honors held, an exemption from taxation was a personal immunity or privilege, and did not pass to a purchaser under the designation of franchises. Indeed, Mr. Justice Field's language, on p. 221, forces one to the conclusion we have drawn, when he says:

> "The question presented is, whether, under the designation of franchises, the *immunity from taxation* upon its property *possessed* by the railroad company accompanied the property in its transfer," etc.

The italics are ours.

If the proposition maintained by the defendant in error in the case at bar be sound, it is incredible that with the very language of our charter and a closely parallel state of facts before them, no one should ever have suggested that the exemption of property, etc., would not begin to run at the same moment as that attaching to the capital stock, but at an indeterminate later period upon the completion of the road within the limits of Louisiana. In the case at bar, the Supreme Court of Louisiana, in its opinion (Record, p. 21), speaking of the point upon which we have been dwelling, say:

"In answer to the other objection (*i. e.*, that in Morgan's case it was not urged that the exemption from taxes had never taken effect), it will suffice to remark that it does not appear that there was any necessity of raising, and if raised, of determining the point of exemption, as the court held that the exemption claimed was personal, inalienable, could not be, and has not been transferred."

But will it "suffice to remark?" It certainly seems absurd to suppose that three courts would have given three several hearings and three judgments to the work of deciding that an exemption had not passed, which the facts showed had never existed.

We think it needless to address to your Honors any extended argument on the question whether the Vicksburg, Shreveport and Pacific Railroad Company took, by the purchase at judicial sale, the exemptions of its predecessor, the Vicksburg, Shreveport and Texas Railroad Company, conferred by section 2 of the latter's charter (Record, p. 32). The right of the plaintiff in error to those exemptions depends upon the act of 1877 (Record, p. 34 et seq.), and particularly upon section 3 thereof (Record, p. 35). That section 3 confers upon the purchaser under foreclosure of the property of a railroad company, part or all of whose road lies within the limits of Louisiana, the franchise to be a corporation upon organizing themselves in a manner prescribed. And it provides that these purchasers shall (Record, p. 35) be

"a body corporate as aforesaid, with all the rights, powers, privileges, immunities, and franchises granted the company or companies (whose road and franchises were sold and bought as aforesaid), and which had been granted to said company or companies by the act of its incorporation, or acts amendatory thereof, in as full and perfect a manner as if the new company chartered under the provisions of this act was granted a charter of incorporation in the very words

of the act or acts of incorporation under which the road was sold existed," etc.

We care not whether these exemptions be called rights, powers, privileges or immunities; franchises, your Honors have in other cases decided that they are not. But we see no escape from the conclusion that whatever they may also be called, they are in any event some one of the first four.

Respectfully submitted,

GEORGE HOADLY,
EDGAR M. JOHNSON,
EDWARD COLSTON,
Counsel for Plaintiff in Error.

116-665

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1884.

No. 394.

The Vicksburg, Shreveport and Pacific Railroad Company, Plaintiff in Error,

vs.

ELIAS S. DENNIS,
Sheriff of Madison Parish, Louisiana,
Defendant in Error.

MOTION TO DISMISS, OR TO AFFIRM JUDGMENT.

JNO. S. YOUNG,
ALEX. PORTER MORSE,
For Defendant in Error.

Judd & Detweiler, Printers.

Supreme Court of the United States.

No. 394.

THE VICKSBURG, SHREVEPORT AND PACIFIC RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

ELIAS S. DENNIS, SHERIFF OF MADISON PARISH, LOUISIANA, DEFENDANT IN ERROR.

Motion to Dismiss or to Affirm Judgment.

Comes Elias S. Dennis, sheriff of Madison parish, Louisiana, defendant in suit No. 394, upon the docket of your honorable court, and entitled The Vicksburg, Shreveport and Pacific Railroad Company, plaintiff in error, *vs.* Elias S. Dennis, sheriff of Madison Parish, Louisiana, defendant in error, and with due respect to and leave of this honorable court moves to dismiss the writ of error in this cause on the grounds that this court is without jurisdiction; because it is apparent from the record in this cause that the decision of the supreme court of the State of Louisiana does not, as alleged by plaintiff in error, allow the exercise of an authority under the State of Louisiana which is a violation of the Constitution of the United States; and, further, because on the face of the record it appears that no Federal question was involved or passed upon by the court below, nor was any question involved impairing the obligation of a contract.

Should the court conclude the record does not show that this court has jurisdiction, then defendant, in the writ of

error, moves the court to affirm the judgment of the supreme court of the State of Louisiana, for the reason that it is manifest the writ of error was taken for delay only, and the question on which the jurisdiction depends is so frivolous as not to need further argument.

JNO. S. YOUNG,
ALEX. PORTER MORSE,
For Defendant in Error.

UNITED STATES SUPREME COURT.

V., S. & P. R. R. Co., Plaintiff in Error,
vs.
ELIAS S. DENNIS, Sheriff of Madison Parish, Louisiana, Defendant in Error.
} No. 394.

BRIEF OF DEFENDANT ON HIS MOTION TO DISMISS THE WRIT OF ERROR OR TO AFFIRM JUDGMENT.

In the case of *Crossley and another* vs. *City of New Orleans and another* (108 U. S., p. 105), on motion to dismiss, the court, by Mr. Chief Justice Waite, say:

"It was settled long ago that in cases coming to this court from the supreme court of Louisiana, the opinion of the court below, as set out in the record, may be referred to, if necessary, to determine whether the judgment is one we have authority to review."

The best statement of the case that can be made is the judgment of the supreme court of the State of Louisiana from which the writ of error is had. It is thus:

"The defendants appeal from a judgment condemning them to pay three years' State taxes, aggregating over six thousand dollars. They resist payment, averring that they are exempt from such taxes by reason of the purchase made in 1879 of the property, franchises, and immunities of the Vicksburg, Shreveport and Texas R. R. Co., chartered by the Legislature in 1853. They claim that by the second sec-

tion of the act of incorporation that company was relieved from the payment of any and all taxation from the beginning of its existence, and was to continue so during ten years after the completion of the road within State borders. We do not propose to determine whether the defendants have acquired the exemption claimed, for the reason that if the first company did not own it the defendant did not acquire it. Pretermitting the several questions which were presented and argued by the able counsel on both sides, we will proceed to consider the sole, main issue which the case offers, which is: whether the exemption granted in 1853 by the State, conceding it, *arguendo*, to have enured to the defendant, does not or does relieve them from taxes falling due before the completion of the road. (Record, page 18.)

It is evident that in the above decision the court did not decide any question that could impair the obligation of a contract. The court does nothing more than interpret the extent of the exemption under section 2 of the act of 1853, and says that the exemption begins to run from the date of completion of the road. The court did not decide as to the validity of the statute, but interpreted its meaning, quoting as its authority not only State decisions, but decisions of the United States Supreme Court. And that the court was right we have only to refer to the many cases cited in the opinion of the court.

In the case first above cited, Crossley and another *vs.* City of New Orleans and another, 108 U. S., p. 105, this Court say:

"The record shows that the defendants in error sought to enjoin the collection of a judgment against their property to enforce an assessment under the drainage laws of Louisiana: 1, because under the operation of the laws authorizing the judgment nothing more remained to be paid thereon; and, 2, because the judgment had, in terms, been released and discharged by certain acts of the General Assembly of the State passed in 1877 and 1878. If the case was decided below on the first of these grounds, no Federal question is involved. From the statement of the case and the opinion

found in this record it is manifest the decision was placed entirely on the ground that the judgment was not collectible under the law as it stood before the acts of 1876 and 1877 were passed. Consequently the case was disposed of before the Federal question presented by the pleading was reached, and that question was not and need not be decided. Under these circumstances we have no jurisdiction, and the motion to dismiss is granted."

It has been held in the case of Brown *vs.* Atwell, 92 U. S. 397, in conformity to many previous decisions:

"That it is not enough to show that a Federal question was presented and argued; it must appear that its decision was necessary to the determination of the case, and that it was actually decided, or that the judgment, as rendered, could not have been given without deciding it."

In McManus *vs.* Sullivan *et al.* (1st Otto, p. 578) it is said:

"This court has no jurisdiction to re-examine the judgment of a State court where a Federal question was not, in fact passed upon, and where a decision of it was rendered unnecessary in the view which the court below took of the case."

It seems useless to multiply authorities. It must be evident no Federal question was involved in the deciding by the lower court as to when the exemption began under the terms of the statute, and if there was, then, under the authorities quoted in the judgment of the supreme court, we think this court will hold the same opinion as to when the exemption began that the court below did. Therefore if the court concludes there was a question involved in the interpretation of the statute, as to whether it violated the Constitution by impairing the obligation of a contract, and concludes the supreme court of Louisiana was right in its determination, we ask the affirmance of this judgment.

Under the decision in West Wisconsin Railroad *v.* Foley, 94 U. S., 100, and in view of the language of the court in

Amory *v.* Amory, 91 U. S., p. 356, and Whitney *v.* Cook, 99 U. S., p. 607, this would seem to be a case for the application of the rule of damages for delay.

JNO. S. YOUNG,
ALEX. PORTER MORSE,
For Defendant in Error.

WASHINGTON, D. C., *March 16th*, 1885.

116-65

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IN THE

Supreme Court of the United States,

October Term, 1885.

The Vicksburg, Shreveport and Pacific Railroad Company, Plaintiffs in Error,

— VERSUS —

Elias S. Dennis, Sheriff of Madison Parish, Louisiana, Defendant in Error.

BRIEF FOR DEFENDANT IN ERROR.

JOHN S. YOUNG,
THOS. O. BENTON,
For Defendant in Error.

SYLLABUS.

JURISDICTION.

I.

It must appear affirmatively, not only that a Federal question was raised and presented for decision in the State Court, but that it was decided, or that its decision was necessary to the judgment rendered.

II.

The U. S. Supreme Court can only decide, whether the Statutes themselves upon which the judgment below rests, impair the obligations of any contract or infringe any rights under the National Constitution.

III.

The Supreme Court has no jurisdiction when the claim depends upon the *construction* and not upon the *validity* of a grant.

IV.

The Supreme Court has no jurisdiction where the decision of the State Court depends upon the *construction* and not upon the *validity* of a Statute.

THE MERITS.

I.

Act No. 228 of 1853, and especially the 2d section of said Act, are in violation of Article 115 of the constitution of 1852.

First—The true object is not expressed in the title.

Second—The Act contains more than one object.

Third—The several objects contained therein are not expressed in the title.

Fourth—The 2d section of said Act violates Article 123 of

the constitution of 1852, which requires taxation to be *equal* and *uniform* throughout the State.

II.

If the Act or section be declared unconstitutional the corporation could claim exemption from no other source, and would therefore be compelled to pay the taxes on its property.

III.

If the Act and section are in accordance with the constitution referred to, then the Legislature could not grant this exemption:

First—On account of the restriction contained in Article 109 of the constitution of 1852, which enumerates the methods by which *aid* can be granted to corporations for internal improvements, and hence forbids all other methods.

Second—That this is an alienation of State sovereignty which, if made at all, to be binding on the State, must be in the nature of a contract.

Third—That the obligation of the grantee was to complete the road in a reasonable time.

Fourth—Said grantee has totally failed to comply with its own obligation, and hence has relieved the State from the grant tendered.

Fifth—That in making the adoption of the act of incorporation to depend upon its acceptance by three-fourths of the stockholders, the Legislature transferred the law-making power and transcended its constitutional limits.

Sixth—From the fact last mentioned, if from no other, the grant of exemption was not binding upon the State.

IV.

Even if the Legislature had the right to make this exemp-

tion, yet the eventful condition on which its commencement depends, the completion of the road, has not yet occurred.

Second—All exemptions must be strictly construed.

Third—The courts must follow the plain and literal provisions of the grant, and cannot supply or even extend them by any supposed or imaginary intendments.

V.

This immunity granted in 1853 had been extinguished long before the sale of December 1, 1879:

First—By failure on part of the corporation to comply with its obligations.

Second—By the corporation having reached the limits of its existence: when it "failed and became insolvent."

Third—By the withdrawal of the grant by the constitution of 1868 in declaring what property should alone be exempted.

Fourth—By the Legislature in 1868, when it virtually repealed the old grant by enacting a new exemption in favor of the N. L. & T. R. R. Co.

Fifth—The immunity having been extinguished could not be transferred by the sale of December 1, 1879.

Sixth—Said immunity was *purely personal to the original company*, and therefore could not be the object of transfer or of commerce.

Seventh—No such right as this immunity was or could be mortgaged or hypothecated to the bondholders, and could not, therefore, be seized and sold under foreclosure.

VI.

As to effect of Act No. 38 of 1877:

First—No "immunity from taxation" could be transferred in "an act to provide for the transfer of rights and franchises" as *this object* is not expressed in its title.

Second—Article 118 of the constitution of 1868 enumerated the kinds of property which the General Assembly can exempt from taxation.

Third—It therefore as strongly prohibits the exemption of other kinds.

Fourth—As the Legislature of 1877 could not legally exempt the road's property from taxation by a direct law, it consequently *could not effect this object* in any other way.

Fifth—No general act can accomplish that which is constitutionally prohibited from being done by a special one.

Sixth—No act of the Legislature could resurrect or give life to a dead immunity, reprobated by the organic law.

IN THE

Supreme Court of the United States,

October Term, 1885.

The Vicksburg, Shreveport and Pacific Railroad Company, Plaintiffs in Error,

— VERSUS —

Elias S. Dennis, Sheriff of Madison Parish, Louisiana, Defendant in Error.

BRIEF FOR DEFENDANT IN ERROR.

This is one of six suits brought by the tax collectors of Madison, Richland, Ouachita and Caddo, against the Vicksburg, Shreveport & Pacific Railroad Company for taxes due the State and the respective parishes during the years 1877, 1878 and 1880.

The suit of Elias S. Dennis, Sheriff and ex-officio tax collector of the parish of Madison, has been selected as a test case, by

agreement of counsel, to determine the decision of itself, and all the others upon a statement of facts agreed to between the parties, they differing on the one point as to when the V., S. & T. R. R. Co., became insolvent.

It first becomes necessary to arrive at the true statement of facts on which this action is based. The Vicksburg, Shreveport & Texas Railroad Company was incorporated under the general act of the Legislature, approved March 14th, 1852, entitled "An act for the organization of corporations for works of public improvement and utility." During the year 1852, in which the company was organized, a new constitution for the State was adopted and inaugurated. Under this constitution of 1852 and by Act No. 228 of 1853, entitled an "Act to incorporate the V., S. & T. R. R. Co.," this original act of incorporation may be said to have been re-enacted and amended. By the 2d section of this Act No. 228 of 1853, "the capital stock of said company shall be exempt from taxation, and its roads, fixtures, workshops, warehouses, vehicles of transportation and other appurtenances, shall be exempt from taxation for ten years after the completion of said road within the limits of the State."

It is upon this section just quoted that defendant depends for exemption from all taxation. The road thus chartered in 1852, and again incorporated in 1853, "dragged its slow length along" until 1861. When, after having mortgaged or sold itself "body and estate" to Messrs. Fannin, Grant & Co., of Georgia, the road was completed to Monroe from a point opposite Vicksburg on the Mississippi; and then, as we have stated, having mortgaged itself with its entire property to this Georgia company, all labor and work tending to its extension further west entirely ceased and was abandoned. Even the bridge which had been nearly completed across the Ouachita river at Monroe was allowed to stand neglected, to decay, to

fall and to disappear, without one effort's having been made to preserve or to save it.

It is, however, further admitted as a fact that in 1862 the extreme western section of the road extending from Shreveport to the Texas line was also completed. So that it is an undoubted historical fact that within nine years after the passage of the Act No. 228 of 1853, all desire to extend or complete the road, all effort to extend or complete it, all power or ability to accomplish this end, had been abandoned, given up, or was entirely wanting on the part of the Railroad company; all power, ability or idea of completing the road was out of existence within less than ten years from the passage of the act of incorporation!

From the report of the president in 1865 we learn that a large portion of the track had been destroyed by both armies during the war; that the engines, &c., had been moved, and the bridges destroyed by Confederate authority, and that the depots, workshops, &c., were destroyed by the Northern army. In fact, the road from Vicksburg to Monroe was totally dismantled and destroyed during the war.

It is contended by plaintiff that the corporation was hopelessly insolvent, and had failed as a moneyed institution at the close of the war in 1865. As evidence of the condition of the company the report of President Wadley, offered in evidence, shows that at the time alluded to the outstanding obligations amounted to over one millon of dollars, whilst the sworn appraisement of the entire property by two disinherited parties was fixed at seventy-five thousand dollars. So apparent was this insolvency in 1865 that at the suit of Wm. R. Gordon vs. the V., S. & T. R. R. Co., the entire road with all its property of every description was offered at public sale in the town of Monroe to satisfy a claim of less than seven hundred dollars, and although a large majority and a quorum of the directors

of said company resided at Monroe, yet it was found impossible, or not worth the trouble, to get them together in order to resist the sale prayed for by Gordon.

Regarding this sale we have nothing to do; it is a part of the wonderful history of a wonderful period, and will doubtless figure hereafter as one of the most remarkable instances of sale and purchase under *fi. fa.* which has ever graced the records of this or any other court of law and justice.

Whatever may be its legal bearing, the fact is uncontradicted that the V., S. & T. R. R. Co., after having been appraised at $75,000, was purchased by Ludeling and associates at something over two-thirds of that amount, and its name was subsequently changed to that of the North Louisiana & Texas Railroad Company. The road remained in the possession of these purchasers, though involved in litigation, until the decision of the United States Supreme Court in the case of Henry R. Jackson et als. vs. V., S. & T. R. R. Co., decided at the October term of 1874. By this decree the sale to Ludeling et als. was declared null and void, and the case was remanded to the Circuit Court for a final settlement of the affairs of the corporation. The road with its property was placed in the hands of a receiver; and finally by order of the United States Circuit Court, the entire road with all its appurtenances, franchises, fixtures, &c., was sold at public auction in the city of New Orleans, on the 1st day of December, 1879, and was bought in by the stockholders, who, on the next day (Dec. 2, 1879) organized themselves into the Vicksburg, Shreveport & Pacific Railroad Company. It is this corporation which is defendant in the present action.

The further facts necessary to complete this statement are that not one mile, one yard, or one foot of this road was built in extension of it from the early part of the year 1862, when the extreme western section was completed, until long after the filing of this suit, to-wit: not until 1882. That both the

companies which bought it in 1866 and in 1870 did so merely as a speculation and without an idea, or the ability to complete it themselves as originally incorporated. And that the Vicksburg, Shreveport & Pacific Railroad has been since the institution of this suit transferred to a foreign corporation, the "Erlanger Syndicate," and that this transfer, referred to, was made after the purchase at Marshall's sale in 1879, and that said V. S. & P. R. R. has since that time been placed in working order throughout its entire length by said foreign "Syndicate," the real defendants before this Court.

ON MOTION TO DISMISS WRIT OF ERROR.

From the facts previously detailed, from the pleadings, and the decisions of the Louisiana Courts, it will be perceived that, pretermitting the questions as to the transmission of an immunity from taxation, or the legal existence of the immunity claimed to have been transferred, the question decided, and which is claimed by the plaintiff in error to have brought this suit within the jurisdiction of the United States Supreme Court —is, the construction of the contract made between the State of Louisiana and the Vicksburg, Shreveport & Texas Railroad Co., by Act No.228, approved April 28, 1853. By reference to printed transcript, page 7, it will be seen that plaintiffs' claim is based on the above contract, as having been transferred to them. They certainly have no greater or different rights than the original grantee. The Supreme Court of Louisiana has merely interpreted or construed the terms of this original grant. Chief Justice Bermudez in his opinion rendered in this case says: "The claim now is, that the exemption accorded in 1853, and which has passed to the defendants, exonerates them from taxes, as well *before* as *after* the completion of the road, but not for more than ten years afterwards." Dennis vs. V., S. & P. R. R., 35th Louisiana Annual, page 959.

The plaintiffs in error contend that under the Act No. 38, approved March 8th, 1877, they were subrogated to the rights and *immunities* of the original grantees. The Supreme Court has interpreted and fixed the rights and *immunity* in question of that original grantee. Can it be contended by any construction of law, that in thus fixing and determining the rights of the original grantee that the Supreme Court of Louisiana has "violated the obligations of contracts" on a pretended right based on an act of the Legislature of the State "transferring the rights of the original party" and passed more than *a quarter of a century after* the grant had been made to the original corporation?

Could any question of Federal jurisdiction have arisen, between the State and the original grantee, as to the construction or interpretation of this grant?

Can the Vicksburg, Shreveport & Pacific Company claim any greater or different rights than those belonging to the Vicksburg, Shreveport & Texas Company under the act of 1853?

The entire question involved and complained of is the construction of a State statute by a State Court in which no possible question of Federal jurisdiction is involved.

The Supreme Court of the United States has recently decided through Chief Justice Waite as the organ of the Court, that, "to give jurisdiction of a writ of error for the review of the judgment of a State Court, it must appear affirmatively, not only that a Federal question was raised and presented for decision, to the highest court of the State having jurisdiction, but that it was decided, or that its decision was necessary to the judgment that was rendered. The cases to this effect are numerous. Murdock vs. Memphis, 20 Wall. 590, 633;" Chanteau vs. Gibson, U. S. Reports, Vol. III, page 200; Adams

Co. vs. Burlington & Missouri Railroad Co., U. S. Reports, Vol. 112, page 127.

And in a still later decision, in which Justice Harlan was the organ, the Court says: "We are restricted by the settled limits of our jurisdiction to the specific inquiry, whether the statutes themselves, upon which the judgment below rests, impair the obligations of any contract, which the company or its policy-holders had with the State, or infringe any right secured by the National Constitution." Railroad Co. vs. Rock, 4 Wall. 177, 180; Knox vs. Exchange Bank, 12 Wall. 379, 383; U. S. Reports, Vol. 113, page 582; Chicago Life Ins. Co. vs. Needles; see also Detroit City Railway Co. vs. Guthard, 114 U. S. Reports, page 133.

Again: "When the validity of claim depends merely upon the *construction* of such a grant, and not upon the validity of the grant itself, the decision of a State court upon such a claim is not subject to revision in the Supreme Court." McDonough vs. Millandon, 3d Howard, 693.

And again: "The Supreme Court has no jurisdiction under the twenty-fifth section of the judiciary act of a case brought up from the highest court of the State, on the record of which it appears that the decision of the State court turned upon the construction and not upon the validity of the statute of a State." Grand Gulf Railroad Co. vs. Marshall, 12 Howard 165.

We concede it is well settled that "the Supreme Court has jurisdiction of a suit in which the plaintiff alleges that a contract made with him by a statute has been violated by a subsequent statute, and that the highest court of law or equity of the State has *held* that the second act is valid." The Binghamton Bridge, 3d Wall. 51.

But in the instant case the plaintiff in error complains that the construction given an original act by the Supreme Court

of Louisiana has violated the obligations of a contract growing out of a *subsequent* or *second* act. The plaintiff being a third party to the original act or contract and only deriving his rights by transfer based on the second act. If there is any law, authority or precedent for such a claim to the jurisdiction of the Supreme Court we have been unable to find it The record shows that the Louisiana Court studiously avoided a decision upon the validity of the rights of the plaintiffs in error, but only fixed the *date at which those rights would take effect*, without in any manner considering even the terms or legal force of the act under which they claim. Referring to the original brief filed by defendant with his motion to dismiss the writ of error, we respectfully submit that said motion should prevail, with damages as claimed.

ON THE MERITS.

I.

Is the Act 228 of 1853, and especially the 2d section of that act, constitutional? This is entitled "An act to incorporate the V., S. & T. R. R. Co." Now follows a preamble which recites, "whereas * * the corporation has been created * * which was enacted in the following words, o-wit." Then follow the twenty-three sections of the charter as already adopted; and finally come the twelve sections of this new act of 1853.

We contend in the first place that this act is in violation of article 115 of the Constitution of 1852, which is in these words: "Every law enacted by the Legislature shall embrace but one object and that shall be expressed in its title." By no possible construction can this be called an act for the incorporation of the railroad company. The preamble itself shows that this body had been incorporated previously under the general act of 1851.

One clear, positive, well defined object of this act was to amend the charter of incorporation already in existence. The

Legislature so considered it, as is clearly shown by the 11th section of the act of itself, which declares, "that whenever any number of stockholders holding three-fourths of the amount of stock now subscribed to said company, shall accept the *amendments* contained in the preceeding sections of this act said *amendments* shall be incorporated into the charter of said company, and take the place of any of the provisions of the original charter that may be inconsistent therewith."

We notice several peculiarities about this act and the section quoted. By the latter the Legislature delegates its power to three-fourths of the stockholders in amount, who alone can make this law operative and effective. It will be perceived that whilst the original charter is copied into the act, yet not one word or line of re-enactment is asserted. On the contrary, all is made to depend upon a contingency, i. e., the acceptance by three-fourths of the stockholders. On the question of the transfer of legislative power we refer to Cooley on Taxation, pp. 16 to 124.

The object of the 115th Article of the Constitution was to require the title of an act to so clearly point out its nature and object that no one could possibly be mistaken in it. And we earnestly contend that the object of the Act 228 of 1853 was not to incorporate the Railroad Co., but besides amending the charter to conceal under that title the granting of many and very different immunities, rights, powers and franchises.

The leading case on this question is that of Walker vs. Caldwell, 4 A. 598. The clear, pointed and forcible reasons given by C. J. Eustis for this 115th Article have been referred to by all modern writers on constitutional law, and have been universally adopted by the courts. He says: "The title of an act often afforded no clue to its contents; important general provisions were found placed in acts, private or local in their operation; provisions concerning matters of practice or judi-

cial proceedings were sometimes in the same statute with matters entirely foreign to them, the result of which was that on many important subjects the statute law had become almost unintelligible, as they whose duty it has been to examine or to act under it can well testify. To prevent any further accumulation to this chaotic mass was the object of the constitutional provision under consideration. In this case the object of the law *is not stated* in the title, *except by reference to the title of the act it purports to amend.*"

The case at bar is a much stronger one than that in which the act of 1848 was here declared unconstitutional. In the act under consideration the object of the 2d section was to alienate or suspend a part of the State sovereignty by exempting a corporation owing a large property from future taxation. Of the 3rd section, to exempt a class of citizens, nowhere else exempted, from jury duty and from military duty. Of the 4th section, to grant a right of way, to make an actual grant of several thousands of acres of land, and to grant a right to use the timber and other material belonging to the State. Of the 6th section, to grant the power to purchase other railroads. Of the 7th section, to grant the power to borrow money and to mortgage its property. Of the 8th section, to grant the power of pledging the taxes due by cities, towns and parishes in order to borrow money. Of the 9th section, to limit the existence of the corporation; and of the 11th section, to determine whether this act itself shall become a law, by shifting the responsibility to three-fourths of the stockholders.

Suppose for an instant, we compare the title of this Act 228 of 1853 with that of Act No. 38 of 1877, on which defendant alone relies for a judgment. The latter is, "An act to provide for the transfer of rights and franchises to purchasers of railroads under foreclosure of mortgage upon the same; to provide for the organization of said purchasers of new railroad

companies; to authorize such new companies to borrow money and to secure the same by mortgage, and to invest such organized companies with certain rights and powers, and to impose on them certain duties." And yet, extended and varied as this title is, even *it* would not express *all* the objects embraced by Act 228 of 1853.

We can do no more in this brief than call the attention of the Court to the series of decisions on this subject to be found in our Annuals from the Fourth down to the last rendered. In 2 A., pp. 91 to 94, the Court concludes, "If the title to this act be held to express its object in the sense of the constitution, the Article 118 remains to all intents and purposes a dead letter."

The next case is also in 5 A., pp. 94 to 98, by which another act is declared unconstitutional. In 9 A. 329 the unconstitutionality of the Homestead law is ably argued by counsel, and although the court decided that law to be in accordance with the article, yet the doctrine held in former cases was reaffirmed. The case peported in 11 A. 722 is directly in point and is a leading case. Here the "Act relative to slaves and free colored persons" is declared unconstitutional in embracing *more than one object.* In 13 A. 433 the Act approved March 19th, 1857, entitled "An act relative to the payment of expenses incident to the prosecution of criminals," is found to be in controvention of the constitution, as "it embraces matters divisible into two distinct objects."

In 14 A. 9, the 15th section of "An act relative to pilots" is declared unconstitutional because this section refers to salvage on cables and anchors taken up in the Mississippi river. In 23 A. 720 it is decided that Act No. 68 of 1870 is unconstitutional, as "nothing in the title of the Act indicates that the jurisdiction of the Third District Court was extended." In 27 A. 144 the act of March 1, 1870, entitled "An act to ex-

tend the area of gas lighting in the city of New Orleans, and to reduce the price now paid by consumers," was declared unconstitutional "in extending the charter of the New Orleans Gaslight Co. for twenty years."

In 26 A. 699, "section 8 of Act No. 47 of 1873, prohibiting a delinquent taxpayer from bringing suit or being a witness," is violative of the constitution, the object of said section not being expressed in the title. Finally, in 32 A. 1013, the Act No. 31 of 1880, prescribing the manner of changing parish lines and of removing parish seats, is null and void, because violative of Article 19 of the Constitution, which declares that "every law enacted by the General Assembly shall embrace but one object and that shall be expressed in its title."

In this long list of decisions, extending from the 4th to the 32d Annual, no one law considered and condemned has been so flagrantly violative of this constitutional provision as Act No. 228 of 1853. At each term of our District Court we see numbers of men successfully claiming exemption from jury duty—not from any provision in the general statutes of the State—not from the jury law—not from the law organizing Courts—but from an obscure private act passed thirty years ago, nominally incorporating an incorporated company. By this act hundreds of men are, and will be excused from jury duty in the many parishes through which the railroad passes. Here we find the most extraordinary exemption from taxation, by which millions of dollars worth of property is relieved from all the burdens of government, and all covered up under the innocent title of *incorporating an incorporated corporation!* Here we find a grant of the public domain amounting to several thousands of acres—with a valuable unlimited use of the timber on public lands of the State, only confined to the State's ownership on said land, all arranged under that same pleasant fiction of doing that which has been already done. It seems

useless to extend the argument on this branch—the inevitable conclusion must be reached that the true object of this act was, as we have stated, to conceal under the present title its true nature and end, to grant certain very important immunities, rights, privileges, franchises and powers to this railroad company. As we have already stated, and the Supreme Court has said again and again, *it is the identical character of statutes which was aimed at in the 115th Article of the Constitution of 1852.*

Plaintiff in his petition to the District Court contends that Section 2 of this Act No. 228 of 1853 is also in violation of Act 123 of the Constitution of 1852. Said article declares that "taxation shall be equal and uniform throughout the State." We take the following as the settled law on this subject: "An exemption to be admissible, it would seem, ought to be either made on the basis of a contract, in which case the public is supposed to receive a full equivalent therefor, or it ought to be made on some ground of public policy such as might justify a pension or a donation of the public funds on some general rule of which all who come within it may have the benefit. It is difficult to conceive of an exemption law which selects single individuals or corporations or single articles of property and taking them out of the class to which they belong, makes them the subjects of capricious legislative favor. Such favoritism could make no pretense to equality; it would lack the semblance of legitimate tax legislation." Cooley on Taxation, pp. 152–3. This doctrine has been fully sustained by our State Supreme Court. We pass over the decisions in 10 A. 735; 11 A. 220, 373, 738; 14 A. 498; 20 A. 597; all of which bear on this subject but more especially refer to levee districts and other designated localities.

In 23d A. 499, "An ordinance of the City of New Orleans which fixes the amount of license which each Insurance Com-

pany must pay on the basis of the amount of the premiums received by each Company is unequal and not uniform. It is therefore unconstitutional and void." The case of the State vs. Fred Endom, 23 A. 66, is a leading case and has been often referred to as authority—so also are 24 A. 112 and 26 A. 140. In 28 A. 102, the decision in the Endom case is pointedly reaffirmed—and in 29 A. 283, the Court sums up the entire matter as follows: "The article of the Constitution does command the law-making power or department of the government *to impose the same burden upon all who are in the same class.*" It is this view which we insist upon, that even if the Legislature had the power to exempt the property of all the railroad companies in the State, from taxation, it certainly could not exempt the property of a single company without infringing the 123d Article of the Constitution requiring taxation to be equal and uniform throughout the State—we can here surely invoke the doctrine expressed by the maxim, *stare decises et non quieta movere.*

II.

The second point of inquiry is, what will be the result if the court should declare Act No. 228 of 1853, or the section of said Act, to be unconstitutional? It is clear that the defendant can only look to this 2d section of said Act to exempt its property from taxation. If this is in contravention of constitutional restrictions, then the railroad company must fall back for all the rights and powers granted to the V., S. & T. R. R. Co. to the original charter framed under the general Act approved March 11, 1851. And as there is no relief granted in this charter its property would come under the general laws of the State, and be subject to taxation, in order to bear its fair proportion of the expenses of the government. Exemption can be looked for from no other source.

III.

The converse of the last proposition presents itself. Should Act 228 of 1853 and the 2d section thereof be declared constitutional, what then? The first question to be answered is, had the Legislature the right under the constitutional restrictions to make this exemption from taxation? We contend it had not.

First—Because the mode or manner by which *aid* can be granted to corporations for internal improvements, &c., is fixed and regulated by Article 109 of the Constitution of 1852, which is in the following words: "The Legislature shall have power to grant aid to companies or associations of individuals formed for the exclusive purpose of making works of internal improvements, wholly or partially within the State, to the extent only of one-fifth of the capital of such companies by subscription, stock, or loan of money, or public bonds, &c."

This is a clear, pointed, unequivocal enumeration of the ways in which the Legislature may give aid to corporations of this character, and by all modern constitutional construction this enumeration precludes every other method of granting such aid. On this point of the negative prohibition contained in Article 109 we refer to the decision in 31 A. 444, where the court says: "No two principles are more elementary in construing State constitutions than those teaching that every power not denied exists, and that where a power which would if not denied, exist, has the methods or instances where it may be exercised, enumerated and defined. The existence of the enumeration is a restriction on the exercise, to the cases covered by the enumeration." See Cooley on Constitutional Law, pp. 87, 64; 28 A. 756; 28 A. 498.

It seems to us clear that by Article 109, the framers of the Constitution of 1852 intended to fix, arrange and establish the methods by which aid might be granted to these corporations,

and that by enumerating these methods *an intentional limit was placed on legislative authority*. Here the question may be asked, does exemption from taxation *aid* a railroad company? Blackstone defines "aid" as "a *subsidy*, a pecuniary tribute paid by a vassal." Under the English Law "aids are extraordinary grants made to the Crown by the House of Commons—subsides, supplies." The general and usual meaning of the term "aid" would certainly apply to the relief from the burden of taxation. One of the first *aids* which corporations usually seek is that of relief from paying taxes!

We can, therefore, taking all things in consideration, come to no other conclusion than that Article 109 of the Constitution of 1852 was a prohibition of any grant by the Legislature such as is made in the 2d section of Act No. 228 of 1853. But in the second place we contend the Legislature is or should have been controlled by the following principles of law: "There are cases in which State Legislatures have pledged the State in a more or less formal manner that on some particular subject of taxation the State should refrain, either wholly or for some definite period, from levying any taxes whatever, or should levy them only to a certain extent. Where such a pledge would bind the State has been made the subject of controversy, the general rule is, that one legislative body cannot by its own action narrow the scope of legislative power, but with the same amplitude that it comes to one body, it must pass to the successor. Pledges, therefore, or stipulations by one Legislature regarding the future levy of taxes, though they may, under some circumstances, charge the conscience of the members or their successors, are not limitations on legislative power, but may be observed or disregarded as it shall be thought the public necessity or policy may require." Cooley on Taxation, pp. 52, 53; Cooley on Limitation, 125, 127, also 280, 284; 7

Cranch. 160; 3 Howard 123; 16 Howard 359, 416; 18 Howard 331, 380, 384; 4 Wallace 480; 13 Wallace 264.

The foregoing cases, whilst they declare the right of the States to pass laws exmpting certain property from taxation, based on a supposed contract, yet they limit this power as follows: "In any case, however, *there must be a consideration*, so that the State can be supposed to have received a beneficial equivalent; for it is conceded on all sides that if the exemption is made as a privilege only, it may be revoked at any time." See Cooley on Limitations 280; 24 Howard 300.

"Taxation is the rule, exemption the exception." "All exemptions are to be strictly construed." Cooley on Taxation, 145, 146.

The act of exemption in the case at bar partook both of the nature of a contract and as a matter of favoritism, but in the view of the law it must be considered as a contract. When this act was passed railroading in Louisiana was in its infancy. This was a favorite idea of crossing the continent along the 32d parallel and connecting the rich country of northeastern Texas with the Mississippi by a road passing through the two largest towns in North Louisiana. More than this, it was a home enterprise, nearly all parties connected with it were Louisianians, except a few prominent citizens of Vicksburg. It was, therefore, a project which appealed to the sympathy and called forth the enthusiastic aid of all the citizens of our State. The Legislature might well come to the aid of such an enterprise and encourage, by all legal means, a speedy completion of the work.

This was the obligation of the Company, that the road should be completed *within a reasonable time*. What has been the result? Its early history was marked and distinguished by blunders, imbecility and failure. The war found it nearly nine years after its organization, at the end of its resources,

with more than half the route untouched and its property mortgaged for a large sum of money. At the close of the war its indebtedness amounted to over a million of dollars, and its valuable property consisted of a double track of old iron scattered over twenty miles of space. It was at this time that the entire property was seized and sold for a debt of seven hundred dollars, and bought for fifty-five thousand dollars. It is unnecessary here to allude to the various subsequent fortunes of the road. Suffice it to say that real, earnest work tending to its completion was not commenced until the year 1882, just thirty years from its first incorporation.

The 9th section of the Act 228 of 1853 limits the existence of the corporation *until it fails or becomes insolvent.* We contend that this occurred in or prior to 1866 when the road was sold, as we shall more particularly argue on the questions of the transfer of the immunity. We come now to the consideration of the case of the State of Louisiana vs. Chas. Morgan, in 28 A. 482; afterwards affirmed by the U. S. Supreme Court in 3 Otto 217.

We first notice that Act No. 149 of 1853 incorporating the New Orleans, Opelousas & Great Western R. R. Co. and the Act 228 of same year incorporating the V. S. & T. R. R. Co., are identical in every respect except the names of the companies and the amounts to be borrowed. With these exceptions the one is an exact transcript of the other. In this brief, necessarily lengthy, we call attention to but the main point directly decided.

On pages 490, 491 of 28th La. An., the Court says: "The stipulation in the Charter was that the capital stock and other property of said company, shall be exempt from taxation for ten years after the completion of said road within the limits of said State; the consideration of the grant of this privilege was of course the promise of the corporation to prosecute to com-

pletion the work of building the railroad to the Sabine or the Texas line; no time was fixed for the completion of the work, but the understanding doubtless was that it should be completed within the time usually occupied in accomplishing such enterprises." Then after stating what the Company has done, what it has failed to do, and thereby fixing its liability, the Court concludes: "To permit the corporation by its own dereliction to prolong the period of exemption from taxation as fixed in the charter for ten years after the completion of the work to an indefinite period, would be to allow it to take advantage of its own wrong, and what the corporation cannot do the defendant claiming under it cannot accomplish." The Court further says, "Will a party who has wholly failed to give or perform the consideration of a contract be permitted to hold the opposite party to the obligation contracted for the equivalent of such consideration?" What would be the practical result of the demand made by defendant? This grant of exemption was made in 1853. By the *laches* of defendant or of those from whom it holds, this property is exempted from taxation until after the completion of the road, which occurred in 1884. The exemption will then continue ten years longer, which will bring it down to 1894. So that the State of Louisiana by this little obscure section of a private act, will have been deprived of the legitimate taxes due on several millions of dollars worth of property for more than *forty years!* If this position is true, it will be without a precedent or a parallel in the books, and will open a new and illuminated page on the *unequal obligations of contracts!*

IV.

We now wish to present the point which was alone considered by the Supreme Court of Louisiana, and on the determination of which this writ of error was based. That is, the construction of the grant made by Section 2 of Act 228 of the

Legislature of Louisiana, approved April 28th, 1853. It has been decided both by the Supreme Courts of Louisiana and of the United States in the case of the State of Louisiana vs. Morgan (see U. S. Reports, Vol. 93, p. 217) that this grant was in the nature of a contract.

The Supreme Court of Louisiana has construed this original contract, not only in the case before this court, but in a previous case based upon an exactly similar act and claim, in which the grant is in the very identical words, and passed in the same year, by the same Legislature as that made to the Vicksburg, Shreveport & Texas Railroad Co.

We refer to the decision of the Supreme Court of Louisiana in the case of the State vs. the Baton Rouge & Gross Tete & Opelousas Railroad Co., reported in 33d La. An. Reports, p. 622. The Court says: "Exemptions from taxation must be strictly construed. Cooley on Taxation 146; Burroughs 132. To grant the relief sought would be to interpolate in the law relied upon, words which in legislative contemplation were not to form part of it, and thus to extend the immunity to the very creation of the corporation, before the beginning of any work, when it is manifest that the initial point for exemption was to spring into existence only after the completion of the road; that we cannot do." We introduce the above extract to show that the interpretation given to this act is the settled jurisprudence of the State regarding these grants of immunity.

In the instant case the Supreme Court of Louisiana carefully reviewed their decision in the suit cited above and elaborated their opinion. The reasoning and authorities cited by Chief Justice Bermudez, are conclusive of the matter. (See 34 La. Annual Reports, page 934 et seq.)

The Supreme Court of the State had no power to legislate on this question, and therefore gave force to the language of the Statute.

The defendant in the State Court, plaintiff in error here, contends the construction placed upon this grant by the law and revenue officers of Louisiana is of higher authority as to the *intention* of the Legislature than the decision of the Supreme Court upon the interpretation of the act! Even were the *premise* correct, the authorities cited could never establish such a proposition.

The record shows that the Vicksburg, Shreveport & Texas Railroad was insolvent in 1865. That it was sold in 1866 under an execution for a debt of less than seven hundred dollars; that it was purchased by Ludeling & Co., who organized a new company, under a new act of incorporation, changing its name to the North Louisiana & Texas Railroad Co. By Act No. 108 of 1868 a new grant was made to the North Louisiana & Texas Railroad Co., in the following words: "The road and property shall be exempted from taxation for ten years *after the passage of this act.*"

We call attention to this, to establish the fact, that Ludeling & Co., composed of several of the most eminent lawyers of Louisiana, and that the Legislature of the State for 1868, never entertained an idea that the exemption contained in Sec. 2 of Act 228 of 1853, could relieve the property of the road, as it then existed, from its liability for taxes. It shows further by inference, that *ten years* was the entire time to which the exemption contained in 2d Section of Act 228 of 1853 could extend.

We rely with perfect confidence on the opinion and authorities cited by the Supreme Court of Louisiana on the construction of this statute, and deem any further argument unnecessary.

V.

We come now, in course of our argument, to the two very important questions, was the immunity of exemption from tax-

ation as granted by 2d Section of Act 228 of 1853 transferable —and was this right actually transferred to the defendants in this suit? We unhesitatingly answer both of these propositions in the negative. We especially deny that this right or immunity was in existence or in any manner operative on the 1st of December, 1879. We have already shown the various vicissitudes through which this road had passed from its second incorporation in 1853 down to the date of sale in 1879. For the first nine years of its unhealthy existence it tottered along in the possession of the original corporators, upheld and supported by the Georgia bondholders. During the five years of the war it lay dead and dismantled, a prey to both armies, and its enemies of every description. From February, 1866, to October, 1874, it only remained in existence *nominally* on the docket of the U. S. Courts, whilst its substitute was in the possession of Ludeling & Co.

From 1874 until December, 1879, the insolvent remains of the defunct corporation was in the hands of a Receiver or Master in Chancery for the benefit of its creditors or bondholders; and finally, on the 1st of December the property, rights and franchises of the *old road by name* were sold at public auction and purchased by defendants in the State Courts. But very few of the individuals connected with the first organization of the road were alive when this last sale was made. Taking all the circumstances into consideration, we can but look on this claim of said defendants as an attempt to resurrect a dead immunity which was purely personal, and to infuse into it a sufficiency of life to be passed by the sale of other property into the hands of third persons.

But even if it were in existence, we still contend that it could not, on account of its personal nature, be transferred.

Referring again to the Morgan case, on page 486 of 28th La.

Annual, Judge Wiley says: "Considering the provisions of sections two, three and eleven of the charter, we are of opinion that the exemption from taxation granted to the railroad was not a transferable right; that the State never intended to confer on the grantee the power to convey this right or privilege to another corporation. After illustrating the above, he concludes: "The grant of these privileges was to the person of the grantee. It was never intended to attach to the property of the corporation and to follow it into third hands when sold on execution." The reasoning of Mr. Justice Field in 3d Otto, p. 221, is still stronger on this question. After fully sustaining the position of the Louisiana Supreme Court, he says: "The whole community is interested in retaining the power of taxation undiminished, and has a right to insist that its abandonment shall not be presumed in any case where the deliberate purpose of the State to abandon it does not appear. 4 Peters 561; 18 Wallace 206. Here no such purpose appears. * * This view is strengthened by the provision exempting the president, engineers, clerks, agents and servants of the company from jury and military duty. No one would pretend that such exemption attended the individuals after they had ceased to be officers and servants of the company."

In the same case the learned Judge draws a nice distinction as to the true meaning of the term "franchise" (3d Otto, p. 223): "Much confusion of thought has arisen in this case and in similar cases from attaching a vague and undefined meaning to the term 'franchises.' It is often used as synonymous with rights, privileges and immunities, though of a personal and temporary character; so that if any one of these exists, it is loosely termed a 'franchise' and is supposed to pass upon the transfer of the franchises of the company. But the term must always be considered in connection with the corporation or property to which it is alleged to appertain.

The franchises of a railroad corporation are rights or privileges essential to the operation of the corporation, and without which its road and works would be of little value; such as the franchise to run cars, to take tolls, to appropriate earth and gravel for the bed of its road, or water for its engines, and the like. They are positive rights or privileges, without the possession of which the road of the company could not be successfully worked. *Immunity from taxation is not one of them.* The former may be conveyed to a purchaser of the road as a part of the property of the company; the *latter is personal and incapable of transfer*, without express statutory provision."

This reasoning applies with even stronger force to the suit at bar, and we think we could, in all safety, leave the decision of this case to rest upon either of the two simple propositions: First, that the immunity had ceased to exist prior to the sale of 1st December, 1879; and secondly, that even if it did exist, it was personal to the first company and could not be transferred without the *special* and *direct* consent of the State.

We have already referred to the 9th section of the Act No. 228, limiting the existence of the corporation to "its failure or becoming insolvent." This, we contend, occurred prior to the Gordon sale in 1866, as is fully shown by the testimony found in the printed transcript of the case of Henry R. Jackson et als. vs. V., S. & T. R. R. Co., V. J. T. Ludeling et al., to be filed with the transcript in this case, and referred to by pages in a subsequent part of this brief, and also by the report of the President in 1865, marked "G," and also filed.

If the corporation had failed or become insolvent as a moneyed institution in 1866 this immunity from taxation ceased by limitation, was no longer binding on the State, and could not be revived by any subsequent change in the corporation.

We refer to the further fact shown by the record, that the

Vicksburg, Shreveport and Texas Railroad Co. had been without President or Directors, or organization of any character, since 1866. That its property had been sold in the latter year, a new company had been incorporated, and the property relieved from taxation by a new Act of the Louisiana Legislature passed in 1868.

On the second question, to say that a purely personal immunity could pass at such a sale would be as utterly fallacious as to say the intellectual being, the corporation itself, could be bought or sold. On this subject we refer to the case of John Chaffe & Bro. vs. Ludeling et al., W. J. Q. Baker intervenor, 27 La. An., p. 607, and authorities cited.

VI.

We next consider the grounds on which the plaintiffs in error base their hopes for a judgment, and first call attention to the Act No. 38, approved March 8th, 1877, entitled, "An act to provide for the transfer of rights and franchises to purchasers of railroads under foreclosure of mortgage upon the same," &c. (See printed transcript, page 34.) Under the first sections of this Act it is declared, "the purchasers at said sale shall have the same right to operate said railroad in this State, as the incorporated company had who executed said mortgage, and said purchasers thereof shall be entitled to and be invested with all the rights, franchises, privileges and immunities appertaining to the property, or franchises, or both, so sold, in as full and complete a manner as the company is, or was, by virtue of its charter of incorporation and amendments thereto, or by virtue of any other law or laws of this State." It is under this Act that the Vicksburg, Shreveport & Pacific Railroad Company expect to step into the shoes of the old original corporation, and thus claim and hold an exemption or immunity from all taxation on the property which they have is purchased.

We will have argued to little purpose if we have not already shown that whatever may be said of the property and franchises of the old corporation, this right of immunity from taxation had ceased to exist, or had become inoperative long years before the date of this last mentioned Act—even if we admit that it ever had a constitutional existence. We have already seen by the decisions of the Louisiana Courts and the U. S. Supreme Court that this immunity was personal and could not be transferred except by *special* and *direct statutory provision*.

In the first place, this Act does not specially except this immunity from taxation from the effect of the general law which prevents its transfer.

Article 114 of the Louisiana Constitution, adopted in 1868, and under which this Act was passed, declares that "every law shall express its object or objects in its title." By reference to the title already copied it will be seen that the Legislature had no such object as the transfer of immunities in the passage of this Act. And in the second place, the Legislature had no right, under the Constitution of 1868, to make such an exemption. We enunciate as a principle which cannot be successfully assailed, that the Legislature of a State cannot effect by a general statute of this character, that which it is positively precluded from doing by a special or private act. Under the Constitution of 1868, Article 118, the Legislature of Louisiana was permitted to exempt from taxation a particular kind of property, i, e., that actually used for church, school, or charitable purposes; it is therefore as strongly prohibited from relieving from this burden any other kind of property.

In the case of the City of New Orleans vs. Lafayette Insurance Co., 28 Annual 756, the Louisiana Supreme Court says: "Under the Constitution of 1868 the General Assembly cannot

commute taxes, because Article 118 prohibits the General Assembly from exempting property from taxation except such as is actually used for church, school or charitable purposes * * this Article restricts the exercise of the taxing power * * this requirement of the constitution is mandatory and it precludes the idea of the existence of power to commute taxes." 27 An. 646, 276; 31 An. 292, and especially 31 An. 440.

Beyond this we emphatically deny that the sale of December 1st, 1879, under which plaintiffs in error claim, could or was intended to embrace this exemption from taxation which the highest tribunal in the land, in the suit of Morgan vs. Louisiana, had declared "not to be a *franchise* but a *personal right and immunity*, and therefore *not transferable or subject to commerce.*"

Hence we conclude that under the decision of the U. S. Supreme Court, the Constitution and laws of Louisiana, the order of the U. S. Circuit Court, and the advertisement of the Marshall, nothing was passed at the sale on the 1st of December, 1879, except the property with all the transferable rights and franchises of the Vicksburg, Shreveport & Texas Railroad Company.

VII.

We have thus presented as succinctly as possible the grounds on which the defendent in error relies for a judgment, and have thus far endeavored to show the fallacy of the Railroad Company's claim of exemption. We have now to notice some of the minor points of defense presented to the State Courts. It is unnecessary to notice the plea that the original corporation was powerless to extend the road, as we have made the same averment. The denial of the "abandonment of the work of extension" is the merest legal verbiage. The assertion that the "suspension of the work was due to an over-powering force

will be readily admitted, if that over-powering force is recognized as the result of absolute poverty, failure and insolvency.

But the plaintiffs in error claim that this entire property was adjudicated to them, by the sale of December 1st, 1879, free from all incumbrances, except those adjudged to the North Louisiana & Texas Co. We answer, they could only purchase that, which by writ from the U. S. Court was ordered and advertised, to be sold. The U. S. Supreme Court, in the case of Jackson et. al. vs. Ludeling & Co., never considered the question of taxes due to the State of Louisiana by the original corporation, and hence made no decree concerning them. Under our State system of laws, the taxes constitute a first lien, privilege or mortgage on all property subject thereto, and necessarily follows and attaches to said property into the hands of whomsoever it may pass. The claim that if any privilege or mortgage existed, it was transferred to the price or proceeds of the property is simply ridiculous! The State of Louisiana had no cognizance of the action of the master in chancery, nor was it required to take notice of a sale made by him in order to collect its taxes. It looked only to the property itself for its security, and hence under the usual process attacks that property in the hands of its present owners.

But as a special ground of defense they deny the insolvency of the original company. The printed transcript of the case of Henry R. Jackson et als. vs. the V., S & T. R. R. Co., vs. J. T. Ludeling et als., before the Supreme Court of the United States, is full and replete with testimony showing the insolvency of the road prior to and at the time of the issuing of the writ at the suit of W. R. Gordon in 1865-66. We refer the Court to Ludeling's answer to 28th interrogatory on page 35; to Gordon's testimony, p. 860. That Wadley, president of the road, told him "bonds could be bought at ten to fifteen cents on the dollar." P. 361. What same party said when

"offering his own bonds for sale and the advantages of buying them," p. 362. The expressions from Wadley "that he did not think the property would bring $50,000;" p. 362; also "the old iron on the road was the only valuable part of it," p. 367. See his answer to 28th interrogatory. To John Ray's testimony on pages 378, 379, in which he gives a full account of the road in 1865, sets forth the views of President Wadley with his estimate of the value of the road, and gives his own (Ray's) estimate at $50,000. Exhibit A, p. 380; exhibit B, p. 384; exhibit D, pp. 381, 382; to F. P. Stubbs' testimony in answer to 28th interrogatory, 392, 393; to W. J. Q. Baker's testimony, pp. 403, 404; also exhibit No. 1 with endorsement, p. 406; to Robt. Ray's, p. 410; to Wadley's on p. 62, in answer to 4th cross interrogatory, "that the bonds sold in New York for ten and fifteen cents on the dollar;" to McGuire's 423; to Heffner 460; Bishop's 461; Brockett 467; Ray's 467; Muir's 469; Kelly's 470; Grayson's 470; Scarborough's 471; Jemison's 475; Murx's 477; Mason's 472; Head's 473; Hardy's 474; Baldwin's and Myrick's 479; and to many others, none of whom value the road and its property at over $75,000, whilst a large majority fix that value at $50,000, and "consider it a bad bargain even at that price."

When we consider the historic impossibility of raising money in the South in 1865–66, and further that the outstanding bonds and other indebtedness of the corporation amounted to more than a million dollars, we must conclude that if this company had not "*failed and become insolvent*," then no corporation has ever attained that interesting situation, from the foundation of the world to the present day!

Finally, the Vicksburg, Shreveport & Pacific Railroad Co. in their defense make an appeal based on what is termed the "equities of the case." At the date of the filing of this suit in the State courts, the road was in the hands of Ed Richardson & Co., a corporation made up of some of the associates of

Ludeling in his purchase, some of the old Georgia bondholders, and some of the creditors of one or the other of the two roads formerly existing. This company made the purchase at the sale in 1879 with all the lights before them. It is a conceded fact that during their ownership the road was not extended *one mile!* They bought the property, not with any intention of completing this great public work, but to hold it for sale until there should be a demand for the road in the market. The present owners, the "Erlanger Syndicate," purchased it after this litigation had commenced.

Will the sympathies of the Court be enlisted for this corporation to such an extent, as to give them the benefits and advantages to be derived from a purely personal immunity, granted by the State more than thirty years ago to the pioneers in railroading within its limits, in order to encourage them to a speedy opening of a great thoroughfare for passage and traffic? It is not our province to say who has retarded or prevented the completion of this road for so long a time, but we do unhesitatingly assert that those who have done so, either by their own acts, or by the acts of those through whom they claim, should never be rewarded by the courts of the country.

As results of this uncompleted work, all trade and commerce in North Louisiana were prostrate and paralyzed during many years for the want of communication with the outer world. Our lands even yet lie vacant; our fields are uncultivated; our forests are unfelled; immigration has turned from us in despair and has gone to enrich other localities. Our population has remained stationary, whilst other States around us have been filling up with a thrifty people. To sum up all, more damage has been done to this portion of Louisiana by the delay in opening and completing this one road, than she has suffered from all other causes, including the Confederate War and its consequences!

Under such circumstances we are totally at a loss to perceive the "equities" which would relieve this Railroad Company from a fair and legitimate proportion of the burdens, responsibilities and costs of government.

Respectfully submitted,

JOHN S. YOUNG,
THOS. O. BENTON,
For Defendant in Error.